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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 818. 489

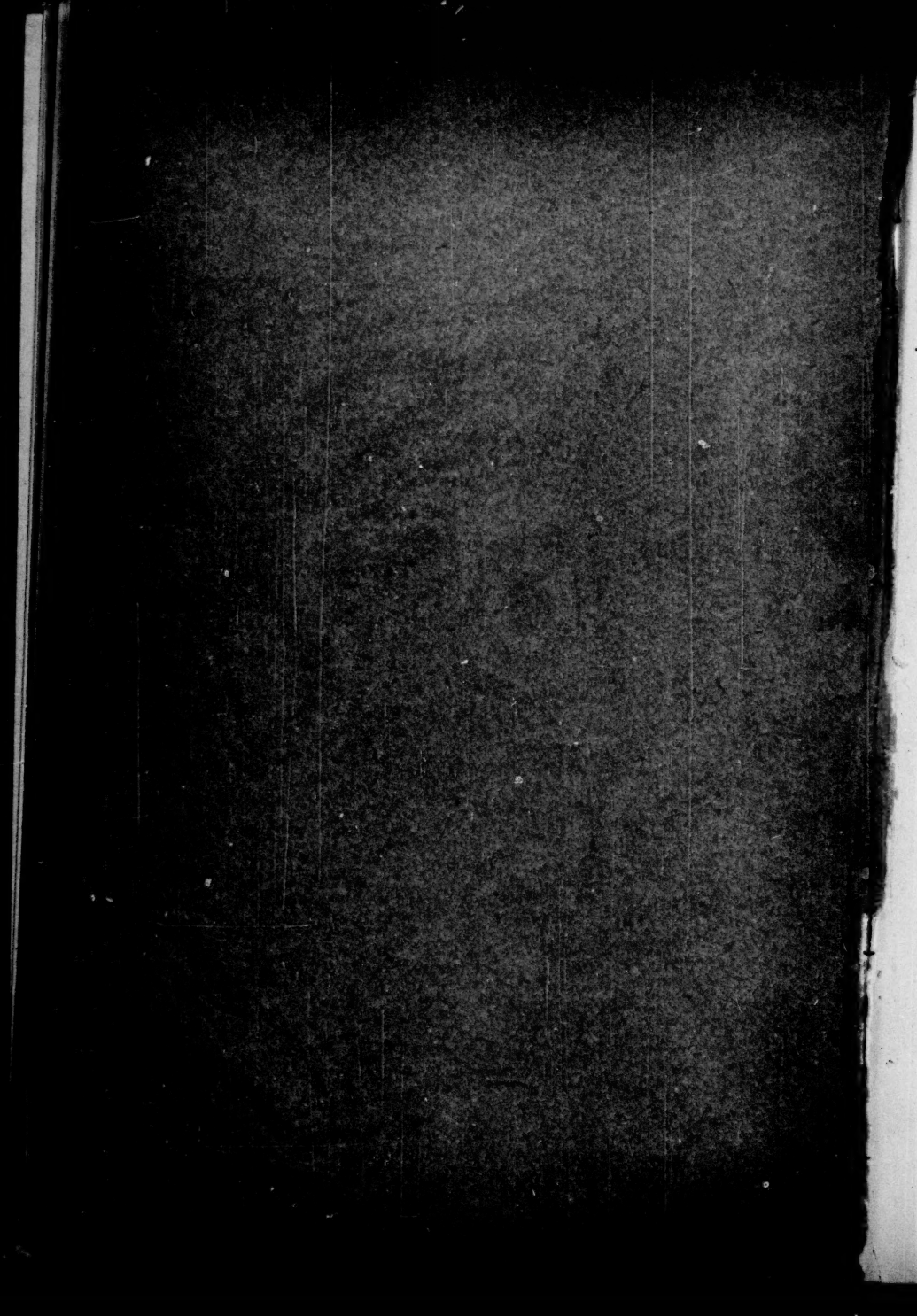
THE SOUTHERN PACIFIC RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

THE CITY OF LOS ANGELES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED JANUARY 2, 1886.



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1 & 2 *Transcript on Appeal.*

In the Supreme Court of the State of California.

CITY OF LOS ANGELES, Plaintiff and Respondent,
vs.
SOUTHERN PACIFIC RAILROAD CO., Defendants and Appellants. } No. 9717.

Glassell, Smith & Patton, attorneys for appellants; W. D. Stephenson, attorney for respondent.

3 *Complaint.*

In the Supreme Court of the State of California.

In Superior Court, Los Angeles County, State of California.

THE CITY OF LOS ANGELES, Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, Defendants. } No. 1832.

The plaintiff complains of the above-named defendant, and alleges as follows:

I.

That the plaintiff is a municipal corporation under the laws of the State of California.

II.

That the defendant is a corporation under the laws of the State of California.

4 III.

That, by virtue of the law and the charter of the city of Los Angeles, the mayor and council of said city duly made, passed, adopted, and approved an ordinance in words and figures following, to wit:

An Ordinance to Provide for the Licensing of Business Carried on in the City of Los Angeles.

The mayor and council of the city of Los Angeles do ordain as follows:

SECTION 1. It shall be unlawful for any person or persons to conduct or carry on within the corporate limits of the city of Los Angeles any vocation, trade, calling, or employment in this ordinance specified, either in their own names and for their own profits and benefit or as agents for any other person or persons, or body corporate, or otherwise, without first procuring from said city a license so to do; and if such person or persons, either for themselves or as agents, shall conduct or carry on any vocation, trade, calling, business, or employment aforesaid without having procured such license he, she, or they, for each violation of this ordinance, shall be deemed

guilty of a misdemeanor, and, upon conviction by any court
5 having jurisdiction thereof, shall be fined therefor in a sum not less than ten nor more than two hundred dollars, or shall be imprisoned for a term not exceeding ninety days, or both, and the amount of said license shall be deemed a debt due to the said city of Los Angeles, and all such persons, bodies corporate, and their agents, or either of them, shall, for each and every violation of this ordinance, be liable to an action in the name of the city of Los Angeles, in any court of competent jurisdiction, for the amount of the monthly license of such business as he or they may be engaged in, with costs of suit.

SEC. 2. That the monthly rates of license for the pursuits, business, trades, occupations, avocations, and employments hereinafter named be, and the same are hereby, established for and within the city of Los Angeles, and the same shall be paid by the owners or proprietors thereof as follows—that is to say:

For the business of banker, where the capital stock exceeds three hundred thousand dollars, $30; where the capital stock amounts to two hundred thousand dollars, and is less than three hundred thousand dollars, $25; where the capital stock amounts to less than two hundred thousand dollars, $20.

For every money broker, $5.

For every butcher shop or stall whose monthly sales exceed $400, $3.

6 For every butcher shop or stall whose monthly sales are under $400, $2.

For every person who, having no butcher shop or stall, engages in the business of selling meat inside the city limits, $3: Provided, however, That this shall not apply to occasional sales of meat by persons not engaged in the sale of the same as a business.

For every undertaker, $10.

For every cheap-John stand, $15.

For every prize-picture lottery, $25.

For carrying on, manufacturing, and selling gas, $25.

For all persons or corporations, not municipal, vending water for domestic purposes, where the monthly sales do not exceed five hundred dollars, $5; where the monthly sales exceed five hundred and do not exceed one thousand dollars, $15; for all exceeding one thousand dollars, $25.

For all manufacturers of ice whose monthly sales exceed $100, $5.

For every foot peddler of goods, wares, and merchandise or vegetables, $5.

For every peddler with horse and wagon of goods, wares, and merchandise, $10.

For every traveling retoucher of pictures and photographs, $5.

For every book agent, $2.

7 For every seller of goods in the streets or merchandise in street stands other than hereinafter mentioned, $3.

For every steam railroad company having a depot in said city, $60.

For every street car, per annum, $20.

For every person bottling and selling beer or ale, per month, $2.

For every hack, coach, or omnibus used for carrying passengers, per month, $2.

For every circus or menagerie or both, per diem, $50.

For every side show to a circus, where a separate admission fee is charged, per diem, $10.

For ever place where playing billiards is allowed for pay, for each table, per month, $2.50.

For every pin alley, $5.

For every restaurant charging fifty cents per meal or upwards, $3.

For every restaurant charging less than fifty cents per meal, $2.

For every dray, cart, wagon, or vehicle used for the delivery of freights or goods in the city for hire, $1.

For every insurance business, foreign or domestic, $3.

For every hotel where the rate per day for transient guests is two dollars and upwards, $5, and where less than two dollars, $3.

8 For every pawn-broker establishment, $10.

For every distiller or manufacturer of spirituous or vinous liquors who does not sell in a less quantity than one gallon, $10: Provided, That this does not apply to those who may manufacture wine or brandy exclusively from grapes of their own raising: And provided, further, That distillers or manufacturers shall be required to pay license only for those months during which they may be engaged for some portion of the time in distilling or manufacturing such liquors.

For every livery stable of first class, having eight buggies and over, $7.50.

For every livery stable of second class, having four buggies and less than eight, $4.

For every livery stable of third class, having less than four buggies, $2.50.

For every wagon and feed stable, $2.50.

For each laundry having seven persons or less employed, $6.

For each laundry having more than seven persons employed, $6, and $2 additional for each person over seven so employed.

For every skating rink, $10.

For every photograph gallery, $2.

All persons having a laundry establishment outside of the limits of the city are hereby prohibited from either receiving or de-

9 livering clothing for washing inside of the limits of the city.

For every planing and moulding mill where both planing and moulding are done, $3.

For every flouring mill, for each run of stones, $1.

The wholesale and retail establishments, stores, and places of trade of every kind and description, including wood and coal yards and places for selling lumber, within the city, where articles of personal property are sold as a business, also all persons who shall conduct or carry on the trade, calling, or business of selling or contracting to sell any goods, chattels, wares, or merchandise by sample or order or upon commission, for himself or other persons, non-residents of this city, shall be, and are hereby, divided into the following classes,

and the owner or owners, proprietor or proprietors, person or persons, shall pay the license herein specified for each respective class as follows: Provided, however, That this provision does not apply to the sale of spirituous, vinous, malt, or mixed liquors, either wholesale or retail:

First class. Those whose monthly sales average ten thousand dollars or over shall pay a license of $15.

Second class. Those whose monthly sales average seven thousand and five hundred dollars and less than ten thousand dollars shall pay a license of $12.

Third class. Those whose monthly sales average five thousand dollars and less than seven thousand five hundred dollars shall pay a license of $10.

Fourth class. Those whose monthly sales average three thousand five hundred dollars and less than five thousand dollars shall pay a license of $7.50.

Fifth class. Those whose monthly sales shall average two thousand and five hundred dollars and less than three thousand five hundred dollars shall pay a license of $5.

Sixth class. Those whose monthly sales shall average one thousand dollars and less than two thousand five hundred dollars shall pay a license of $2.

Seventh class. All those whose monthly sales are under one thousand dollars and over one hundred dollars shall pay a license of $1.

Every wholesale liquor dealer whose monthly sales average $2,500 or more shall pay a license per month of $20.

Every wholesale liquor dealer whose monthly sales average $2,000 and less than $2,500 per month shall pay a license per month of $15.

Every wholesale liquor dealer whose monthly sales average $750 and less than $2,000 per month shall pay a license per month of $10.

Every wholesale liquor dealer whose monthly sales average less than $750 shall pay a license per month of $5.

Every brewer, resident and non-resident, selling in the city, whose monthly sales average $500 and over per month, $10.

Every brewer, resident and non-resident, selling in the city, whose monthly sales are under $500 per month, $5.

Every saloon or bar where spirituous, vinous, malt, or mixed liquors are sold or given away in a less quantity than one gallon, whose monthly sales average $500 or more, a license of $15.

For all other saloons, bars, or places, including club-rooms, where spirituous, vinous, malt, or mixed liquors are sold or given away at retail or in quantities of less than one gallon, a license of $10.

For every commission business, selling country produce, $2.

For every company carrying on the business of common carriers, not otherwise herein enumerated, $5.

The proprietors or managers of every musical, rope, wire, dancing, magic, or theatrical entertainment, and all traveling shows and entertainments, where a price of admission is asked, shall pay a license, where the price of admission is fifty cents or less,

for each exhibition thereof, $3; where the price of admission is more than fifty cents, for each exhibition thereof a license of $5.

The proprietors of each and every dance-house or cellar shall pay a license per night of $10.

All persons carrying passengers for hire on public days, such as days of fairs, races, or other public amusements, shall pay a license for each day of one dollar: Provided, That this shall not apply to persons who are required by this ordinance to pay a monthly license for similar business.

All persons, resident or non-resident, selling goods, wares, or merchandise, or personal property of any description at public auction shall pay a license as follows: For all sales exceeding $300 and not exceeding $500 per day, for each day of sale, $2.

For all sales exceeding $500 and not exceeding one thousand dollars per day, for each day of sale, $10.

For all sales exceeding one thousand dollars and not exceeding two thousand dollars per day, for each day of sale, $15.

For all sales exceeding two thousand dollars per day, for each day of sale, $20.

13 Every person carrying on the business of real estate agent or broker shall pay a license of $3 per month.

Every person conducting or carrying on the regular business of selling fruit in stands fronting on the public streets, or upon wagons or vehicles standing in the public streets, shall pay a monthly license of $1.

No person shall conduct or carry on in the public streets any business heretofore mentioned, either from stands or wagons or other vehicles, without first having obtained the consent of the owner or owners of the property fronting on that portion of the public streets where such stand or vehicle may be located, whether he shall have obtained said license or not; and any person carrying on said business without said consent shall be deemed guilty of a misdemeanor, and each and every day he shall carry on said business shall constitute a new and separate offense, and shall be punished accordingly.

Every person conducting or carrying on as a general or regular means of livelihood the trade, calling, or business of peddling in a wagon upon the streets of said city any kind of vegetables shall pay a license per month of $12.

Each soda-water factory shall pay a license of $2.50.

14 Each storehouse for grain, of capacity of 500 tons or more, shall pay a license of $3.

Each storehouse for grain, of capacity of less than 500 tons, shall pay a license of $2.

Each milkman, whose sales per month average over one hundred dollars and less than four hundred dollars per wagon, for each wagon, $2.

Each milkman, whose sales per month average four hundred dollars or more per wagon, for each wagon, $4.

SEC. 3. The licenses in this ordinance provided for shall be due and payable to the city on the first Monday of each month in advance, excepting where said license is per day, when the same shall

be paid each day in advance; and where said license is per annum the same shall be paid at the times specified in the ordinance providing the same, and, when not specified, in the month of December in each year. The tax collector of said city shall deliver the books in his office containing a report of the names of all persons from whom licenses are now collected; and also, on or before the 25th day of each month, he shall deliver to the clerk of the council the delinquent list and licenses uncollected by him for that month, and also a list of all persons that have come to his knowledge, or
15 who he believes are not upon his license list, and charged with the payment of license, and shall pay over to the treasurer all licenses collected by him in such month, and report the amount thereof to the council, together with the amount delinquent, at the first meeting of the council in each month.

SEC. 4. It shall be the duty of the city clerk to issue a monthly license under this ordinance to each person so reported to him, and for all other persons known to the city clerk liable to pay a license under this ordinance, duly signed by the mayor and clerk, and to fix and state the amount of license thereon, and on the first Monday of each month deliver such license to the said tax collector for collection, taking his receipt for the amount thereof; and the said clerk, in fixing the rate of license for the several classes in this ordinance hereinbefore specified, shall grade the same according to his best information and knowledge, and for that purpose may confer with the persons in interest, and may require any person to file his or her affidavit as to which class he or she may belong: Provided, That in no case shall any mistake by the clerk, in fixing the amount of said license, prevent the collection of what shall be actually due, with all costs against any one selling without license or refusing to
16 pay such rate so fixed by the clerk. It shall be the further duty of said clerk, immediately after the delinquent list has been delivered to him, to deliver the license uncollected to the chief of police, whose duty it shall be to at once proceed to collect the same, in his discretion, by suit or otherwise. Nothing herein, however, shall prevent a criminal prosecution, as provided in section 1, for any violation of the provisions of this ordinance.

SEC. 5. In all cases of licenses to keep a bar, saloon, grocery, or dance house, the person applying for the same shall give a bond, with two or more sureties, to be approved by the mayor, before the delivery of any license, in the sum of two thousand dollars, to the city of Los Angeles, conditioned that they will pay all licenses due to the city under this ordinance, or any other ordinance amendatory hereof, and they will keep a quiet and orderly house, and upon the indication and appearance of any disturbance or threatened breach of the peace therein that they will take prompt and immediate action to secure the arrest of the disorderly person, or suppression of any disorderly conduct on the premises so occupied by them, and that they will not permit Indians to obtain liquor at their places of business, directly or indirectly, upon any consideration what-
17 ever, nor suffer any drunken Indians to remain about the saloon and premises under their control.

SEC. 6. All ordinances or parts of ordinances conflicting herewith are hereby repealed.

SEC. 7. The clerk of the council shall certify to the passage of this ordinance, and shall cause the same to be published once in English in the Los Angeles Daily Evening Express and once in Spanish in La Cronica, and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its session of February 20th, A. D. 1879.

W. W. ROBINSON,
Clerk of the Council of the City of Los Angeles.

Approved this 24th day of February, A. D. 1879.
J. R. TOBERMAN, *Mayor.*

That said ordinance was adopted by the council of said city of Los Angeles February 20th, 1879, and approved by the mayor of said city February 24th, 1879, as in said ordinance above stated; that after approval of the same by said mayor it was pub-
18 lished once in English in the Los Angeles Daily Evening Express, a newspaper published in said city of Los Angeles, and once in Spanish in La Cronica, a newspaper published in said city of Los Angeles.

IV.

That said ordinance took effect on the 28th day of February, 1879, and was in force thereafter until the 26th day of April, 1881.

V.

That by the terms of said ordinance every steam railroad having a depot in said city was required to pay to said city the sum of $60 per month license.

VI.

That, by virtue of the law and the charter of the city of Los Angeles, the mayor and council of the said city duly made, passed, adopted, and approved an ordinance in words and figures following, to wit:

An Ordinance to Provide for the Licensing of Business Carried on in the City of Los Angeles.

The mayor and council of the city of Los Angeles do ordain as follows:

19 SECTION 1. It shall be unlawful for any person or persons to conduct or carry on within the corporate limits of the city of Los Angeles any vocation, trade, calling, or employment in this ordinance specified, either in their own names and for their own profits and benefit or as agents for any other person or persons, or body corporate, or otherwise, without first procuring from said city

a license so to do; and if any such person or persons, either for themselves or as agents, shall conduct or carry on any vocation, trade, calling, business, or employment aforesaid without having procured such license he, she, or they, for each violation of this ordinance, shall be deemed guilty of a misdemeanor, and upon conviction by any court having jurisdiction thereof, shall be fined therefor in a sum not less than ten dollars nor more than two hundred dollars, or shall be imprisoned for a term not exceeding ninety days, or both, and the amount of said license shall be deemed a debt due to the said city of Los Angeles; and all such persons, bodies corporate, and their agents, or either of them, shall, for each and every violation of this ordinance, be liable to an action in the name of the city of Los Angeles, in any court of competent jurisdiction for the amount of the license of such business as he or they may be engaged in, with costs of suit.

SEC. 2. That the monthly rates of license for the pursuits, business, trades, occupations, avocations, and employments hereinafter named be, and the same are hereby, established for and within the city of Los Angeles, and the same shall be paid by the owners or proprietors thereof as follows—that is to say:

For the business of banker, $20.

For every money broker, $5.

For every butcher shop or stall whose monthly sales exceed $400, $3.

For every butcher shop or stall whose monthly sales are under $400, $2.

For every person who, having no butcher shop or stall, engages in the business of selling meat inside the city limits, $3: Provided, however, That this shall not apply to occasional sales of meat by persons not engaged in the sale of the same as a business.

For every undertaker, $5.

For every cheap-John stand, $15.

For every prize-picture lottery, $25.

For carrying on the business of manufacturing and selling gas, $25.

For all persons or corporations, not municipal, vending water for domestic purposes, where the monthly sales do not exceed five hundred dollars, $5; where the monthly sales exceed five hun-
21 dred dollars and do not exceed one thousand dollars, $15; for all exceeding one thousand dollars, $25.

For every manufacturer of ice, $5.

For every foot peddler of goods, wares, and merchandise or vegetables, $5.

For every peddler with horse and wagon of goods, wares, and merchandise, $10.

For every artist, agent, or canvasser soliciting painting, retouching, or furnishing pictures of any description, $5.

For every book agent, $2.

For every seller of goods in the streets or merchandise in street stands other than hereinafter mentioned, $3.

For every steam railroad company having a depot in said city, $40.

For every person bottling and selling beer or ale, $2.

For every hack, coach, or omnibus used for carrying passengers, $2.

For every place where playing billiards is allowed for pay, for each table, $2.50.

For every pin alley, $5.

For every restaurant charging fifty cents per meal or upwards, $3.

For every restaurant charging less than fifty cents per meal, $2.

For every insurance business, foreign or domestic, $3.

22 For every hotel where the rate per day for transient guests is two dollars and upwards, $5; and where less than two dollars, $3.

For every pawnbroker establishment, $10.

For every distiller or manufacturer of spirituous or vinous liquors who does not sell in a less quantity than one gallon, $10: Provided, That this does not apply to those who may manufacture wine or brandy exclusively from grapes of their own raising: And provided, further, That distillers or manufacturers shall be required to pay license only for those months during which they may be engaged for some portion of the time in distilling or manufacturing such liquors.

For every livery stable of first class having eight vehicles and over for hire, $7.50.

For every livery stable of second class having four vehicles and less than eight for hire, $4.

For every livery stable of third class having less than four vehicles for hire, $2.50.

For every wagon and feed stable, $2.50.

For every laundry, $5.

For every skating rink, $10.

For every photograph gallery, $2.

For every planing and moulding mill where both planing and moulding are done, $3.

For every flouring mill, $5.

23 The wholesale and retail establishments, stores, and places of trade of every kind and description, including wood and coal-yards and places for selling lumber, within the city, where articles of personal property are sold as a business, shall be and are hereby divided into the following classes, and the owner or owners, proprietor or proprietors, person or persons, shall pay the license herein specified for each respective class, as follows: Provided, however, That this prevision does not apply to the sale of spirituous, vinous, malt, or mixed liquors, either wholesale or retail:

First class. Those whose monthly sales average ten thousand dollars or over shall pay a license of $15.

Second class. Those whose monthly sales average five thousand dollars and less than ten thousand dollars shall pay a license of $10.

Third class. Those whose monthly sales average two thousand

five hundred dollars and less than five thousand dollars shall pay a license of $5.

Fourth class. Those whose monthly sales average five hundred dollars and less than two thousand five hundred dollars shall pay a license of $2.

Fifth class. All those whose monthly sales average less than five hundred dollars shall pay a license of $1.

24 For every person who shall conduct or carry on the trade, calling, or business of selling or contracting to sell any goods, chattels, wares, or merchandise by sample or order, or upon commismission, for himself or other person, non-resident of this city, $10.

For every runner, agent, or solicitor engaged in the business of soliciting custom for any hotel, boarding-house, inn, lodging-house, or place where board and lodging is furnished for pay, except the owners or drivers of hacks, cabs, or other vehicles paying license for said vehicles, $1: Provided, That every such runner, agent, or solicitor or any other person soliciting custom for any hotel, boarding-house, inn, or place where board and lodging is furnished for pay shall wear a badge, which badge shall be numbered, and the number thereof recorded with the chief of police with the name of the person having the right to wear the said number, and all other persons are forbidden to use or wear such number without first changing the name attached thereto, recorded with the chief of police.

For every wholesale liquor dealer selling in quantities of not less than one gallon, $20.

For every brewer, resident and non-resident, selling in the city whose monthly sales average $500 and over per month, $10.

25 Every brewer, resident and non-resident, selling in the city whose monthly sales average less than $500 per month, $5.

For every saloon, bar, or place, including club-rooms, where spirituous, vinous, malt, or mixed liquors are sold or given away at retail or in quantities less than one bottle whose monthly sales average $500 or more, $15.

For every other saloon, bar, or place, including club-rooms, where spirituous, vinous, malt, or mixed liquors are sold or given away at retail or in quantities of less than one bottle, $10.

For every saloon, store, or place where spirituous, vinous, malt, or mixed liquors are sold in quantities not less that one bottle nor more than one gallon, in addition to any other license, $2.50.

For every commission business selling country produce, $2.

For every person or company carrying on the business of common carriers not otherwise herein enumerated, $5.

For every person carrying on the business of real estate agent or broker, $3.

For every person conducting or carrying on the regular business of selling fruit in stands fronting on the public streets or upon wagons or vehicles, or on foot, $1.

26 No person shall conduct or carry on in the public streets any business heretofore mentioned, either from stands or wagons or other vehicles, without first having obtained the consent of the owner or owners of the property fronting on that portion or

the public streets where such stand or vehicle may be located, whether he shall have obtained said license or not; and any person carrying on said business without said consent shall be deemed guilty of a misdemeanor, and each and every day he shall carry on said business shall constitute a new and separate offense, and shall be punished accordingly.

For every person conducting and carrying on, as a general or regular means of livelihood, the trade, calling, or business of peddling in a cart or wagon upon the streets of said city any kind of vegetables, for each cart or wagon so employed, a license per month of $5.

For every person who shall sell, barter, or exchange any opium, either for himself or on commission or as a broker for another, except it be for scientific or medicinal purposes or upon the prescription of a practicing physician, whose monthly sales average $200 or more, in addition to any other license, $15.

27 For every person who shall sell, barter, or exchange any opium, either for himself or on commission or as a broker for another, except it be for scientific or medicinal purposes or on the prescription of a practicing physician, whole monthly sales average less than $200, in addition to any other license, $10.

For every auctioneer establishment, $5.

For every soda-water factory, $2.50.

For every storehouse for grain or merchandise, $3.

For every milk wagon, $1.

That the daily rates of license for the pursuits, business, trades, occupations, avocations, and employments hereinafter named be, and the same are hereby, established for and within the city of Los Angeles, and the same shall be paid by the owners and proprietors thereof as follows—that is to say:

For every circus or menagerie, or both, per diem, $50.

For every side show to a circus, where a separate admission fee is charged, per diem, $10.

For every musical, rope, wire, dancing, magic, or theatrical entertainment, and all traveling shows and entertainments, where a price of admission is asked, for each day, $5.

For every dance house or cellar, for each day, including night, $10.

28 For each person carrying passengers for hire on public days, such as days of fairs, races, or other public amusements, for each day, $1: Provided, That this shall not apply to persons who are required by this ordinance to pay a monthly license for similar business.

For every dray, cart, wagon, or vehicle used for the delivery of freights or goods in the city for hire, for each three months the owner shall pay a license of $1: Provided, That each of said drays, carts, wagons, or vehicles shall have a number posted thereon, of which number a record shall be kept by the city tax collector in his office.

For every street car used on any street railroad during the year, or any portion thereof, there shall be paid a license for each car per annum of $20.

SEC. 3. The monthly licenses in this ordinance provided for shall

be due and payable to the city on the first Monday of each month, in advance. The licenses for three months in this ordinance provided for shall be due and payable to the city on the first Monday of said three months. Where the said licenses are per day the same shall be due and payable to the city each day, in advance, and where said license is per annum the same shall be due and payable to the city at the time specified in the ordinance providing the same, and, when not so specified, on the first Monday of December in each year.

29 The city tax collector of said city shall, on or before the first day of each month, deliver to the clerk of the council the delinquent list and licenses uncollected by him for the previous month, and also a list of all persons that have come to his knowledge, or who he believes are not upon the license list and charged with the payment of license, and shall pay over to the city treasurer all licenses collected by him in such month and report the amount thereof to the council, together with the amount delinquent, at the first meeting of the council in each month.

SEC. 4. It shall be the duty of the clerk of the council to issue a license under this ordinance to each person so reported to him and for all other persons known to the clerk liable to pay a license under this ordinance, duly signed by the mayor of said city and the clerk of the council, and to fix and state the amount of license thereon, and on the first Monday of each month deliver such license to the said city tax collector for collection, taking his receipt for the amount thereof; and the said clerk, in fixing the rate of license for the several classes in this ordinance hereinbefore specified, shall grade the same according to his best information and knowledge, and for that

30 purpose may confer with the persons in interest, and may require any person to file his or her affidavit as to which class he or she may belong: Provided, That in no case shall any mistake by the clerk in fixing the amount of said license prevent the collection of what shall be actually due, with all costs, against any one selling or carrying on said business without license or refusing to pay such rate so fixed by the clerk. It shall be the further duty of said clerk immediately after the delinquent list has been delivered to him to deliver the license uncollected to the chief of police, whose duty it shall be to at once proceed to collect the same, in his discretion, by suit or otherwise. Nothing herein, however, shall prevent a criminal prosecution, as provided in section 1, for any violation of the provisions of this ordinance.

SEC. 5. In all cases of license to keep a bar, saloon, grocery, or dance-house, the person applying for the same shall give a bond, with two or more sureties, to be approved by the mayor, before the delivery of any license, in the sum of two thousand dollars to the city of Los Angeles, conditioned that they will pay all licenses due to the city under this ordinance or any other ordinance amendatory hereof, and they will keep a quiet and orderly house, and

31 upon the indication and appearance of any disturbance or threatened breach of the peace therein that they will take prompt and immediate action to secure the arrest of the disorderly

person or suppression of any disorderly conduct on the premises so occupied by them, and that they will not permit Indians to obtain liquor at their places of business, directly or indirectly, upon any consideration whatever, nor suffer any drunken Indians to remain about the saloon and premises under their control.

SEC. 6. All ordinances or parts of ordinances conflicting herewith are hereby repealed.

SEC. 7. The clerk of the council shall certify to the passage of this ordinance, and shall cause the same to be published once in English in the Los Angeles Daily Evening Express, and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its session of April 23d, A. D. 1881.

W. W. ROBINSON,
Clerk of the Council of the City of Los Angeles.

Approved this 25th day of February, A. D. 1881.
J. R. TOBERMAN, *Mayor.*

32 That said ordinance was adopted by the council of said city of Los Angeles April 23d, 1881, and approved by the mayor of said city April 25th, 1881, as in said ordinance stated; that after approval of the same by said mayor it was published once in English in the Los Angeles Daily Evening Express, a newspaper published in said city.

VII.

That said ordinance took effect on the 26th day of April, 1881, and ever since has been and is now in full force.

VIII.

That by the terms of said last-named ordinance every steam railroad having a depot in said city was required to pay the said city the sum of $40 per month license.

IX.

That by the terms of said ordinance the licenses therein provided for and to be paid by the persons liable therefor are due and payable on the first Monday of each month in advance.

X.

That the defendant is now and was on the 24th day of Feb-
33 ruary, 1879, and has been ever since a corporation under the laws of the State of California, duly incorporated, and for the purpose of constructing and maintaining a railroad in the State of California, and to do business as a steam railroad company, and to have its depots and places of business in such places as the railroad constructed by the said Southern Pacific Railroad Company should enter and pass through.

XI.

That the Southern Pacific Railroad Company was, on the 24th day of February, 1879, and ever since has been, and is now, a steam railroad company and a corporation under the laws of said State, and as such, on said 24th day of February, 1879, and ever since, maintained and controlled a railroad called the Southern Pacific railroad, the same being a steam railroad, which said railroad, during such time, entered and passed through a portion of said city of Los Angeles, and trains of cars, drawn by steam engines, were, by said defendant, caused to pass and repass, loaded with freight and passengers, daily through said city of Los Angeles.

XII.

34 That the defendant has, ever since the 24th day of February, 1879, by its agent, and for its own profit and benefit, and for pay, in lawful money of the United States, conducted and carried on, within the corporate limits of the city of Los Angeles, the business incident to and connected with the carrying of freight and passengers, on and by means of its steam railroad, and has, during such time and times, maintained, owned, controlled, and used for the purpose connected with the business of carrying freight and passengers on their said steam railroad and in and through said city, a depot, located within the corporate limits of said city of Los Angeles.

XIII.

That defendant has conducted and carried on its said business by its agents, and within the corporate limits of said city of Los Angeles, at the same time having a depot in said city during each and every month from and including the month of August, 1880, to and including the month of September, 1882, and to the date of the filing of this complaint, for its own profit and benefit, without a license from the authorities of said city.

XIV.

That among the names reported by the tax collector of said
35 city to the clerk of the council of said city, from whom licenses were to be collected at the time of the adoption of said ordinance, and in said ordinance directed and commanded to pay a license, was the name of defendant.

XV.

That by the terms of the ordinance, which was approved February 24th, 1879, the defendant was required to pay for the right to carry on and engage in the business incident to and connected with a steam railroad, with a depot in said city, the sum of $60 per month, lawful money of the United States.

XVI.

That the clerk of the council of said city issued to said defendant for each of the months of August, September, October, November, December, 1880, and January, February, March, and April, 1881, a monthly license, duly signed by the mayor of said city and the clerk of said council, and fixed and stated in said license the amount thereof, to wit, the sum of sixty dollars for each license so issued, and, on the first Monday of each of the said months above named, delivered to the city tax collector for collection a license so signed, and having the amount—$60—therein stated and
36 fixed as the amount due and to be collected from said defendant for such month for carrying on said business, taking the receipt of said tax collector for the amount thereof.

XVII.

That on or before the 25th day of each of the months above named the said clerk of the council received from the said tax collector a delinquent list of the licenses uncollected by him during each of said months, and that the name of the defendant was contained on each one of the said delinquent lists so delivered and returned.

XVIII.

That immediately after the said delinquent lists were so delivered and returned to said clerk by said tax collector, and the said licenses so issued were returned to the said clerk by the said tax collector uncollected, the said clerk delivered the same to the chief of police of said city to collect the same.

XIX.

That the said chief of police received from the said clerk the licenses issued and returned as aforesaid, and that the same were, in substance, as follows, to wit:

37 "$60. *City License.* No. —.

"Must be paid in advance. Post this in a conspicuous place.

"CITY OF LOS ANGELES, *Aug.* 1, 1880.

"S. P. R. R. having paid into the city treasury $60, license is hereby granted him to transact the business of common carrier in the city of Los Angeles for the term of one month, from the 1st day of August to the 1st day of September, 1880, in conformity with the provisions of an ordinance passed and approved February 24th, 1879, and all ordinances amendatory thereto.

"W. W. ROBINSON, *Clerk.*

"J. R. TOBERMAN, *Mayor.*"

That each of said licenses was identical with the copy above, except in number and except that the date of each corresponded to the month for which it was issued.

XX.

That each of said licenses so issued was, by said chief of police, presented to said defendant, and payment thereof, to wit, the sum of $60, for each and every one of said licenses, making in all
38 the sum of $540, lawful money of the United States, demanded of the defendant; but the defendant neglected and refused to pay the same, or any part thereof.

XXI.

Defendant further avers that, by the terms of the ordinance which was approved April 25th, 1881, the defendant was required to pay for the right to carry on and engage in the business incident to and connected with a steam railroad with a depot in said city the sum of $40 per month, lawful money of the United States.

XXII.

That the clerk of the council of said city issued to said defendant for each of the following months, viz, May, June, July, August, September, October, November, December, 1881, and January, February, March, April, May, June, July, August, and September, 1882, a monthly license, duly signed by the mayor of said city and the clerk of said council, and fixed and stated in said license the amount thereof, to wit, the sum of $40, for each license so issued, and on the first Monday of each of the said months delivered to the city tax collector for collection a license so signed, having the amount,
39 $40, therein stated and fixed as the amount due and to be collected from said defendant for such month for carrying on said business, taking the receipt of said tax collector for the amount thereof.

XXIII.

That on or before the 25th day of each of the months named in paragraph XXII of this complaint the said clerk of the council received from the said tax collector a delinquent list of the licenses uncollected by him during each of said months, and that the name of the defendant was contained on each one of the said delinquent lists so delivered and returned.

XXIV.

That immediately after the said delinquent lists were so delivered to said clerk by said tax collector, and the said licenses so issued were returned to the said clerk by the said tax collector uncollected, the said clerk delivered the same to the chief of police of said city to collect the same.

XXV.

That said chief of police received from the said clerk the licenses issued and returned as aforesaid, and that the same were in substance as follows, to wit:

40 "$40. *City License.* No. ——.

"Must be paid in advance. Post this in a conspicuous place.

"CITY OF LOS ANGELES, *May* 1, 1881.

"S. P. R. R. having paid into the city treasury $40, license is hereby granted him to transact the business of common carrier in the city of Los Angeles for the term of one month, from the 1st of May to the 1st of June, 1881, in conformity with the provisions of an ordinance passed and approved February 24th, 1879, and all ordinances amendatory thereto.

"W. W. ROBINSON, *Clerk.*

"J. R. TOBERMAN, *Mayor.*"

That each of said licenses was identical with the copy above, except in number, and except that the date of each corresponded to the month for which it was issued.

XXVI.

That each of said licenses so issued was by said chief of police presented to said defendant, and payment thereof, to wit, the sum of $40 for each and every one of said licenses, making in all
41 the sum of $680, lawful money of the United States, demanded of the defendant, but the defendant neglected and refused to pay the same or any part thereof.

XXVII.

Plaintiff further avers that during each and every one of the months above stated defendant, for its own profit and benefit, through its agents, conducted and carried on the business in manner aforesaid, having a depot in said city, and that it has paid no license to said city whatever, and that defendant has not paid the licenses above stated, nor any part thereof; that the amount of $1,220, and the whole thereof, remains unpaid, and is in no part satisfied, though the same has been demanded by the plaintiff, but is still due plaintiff and in no part paid or satisfied.

Wherefore, by reason of the ordinances adopted and approved by the municipal authorities of the said city of Los Angeles, the defendant has become liable and an action has accrued to the plaintiff to sue and recover from the defendant the amount of the licenses for such businesss due from defendant, the sum of $1,220, lawful money of the United States.

42 Wherefore plaintiff prays judgment against defendant for the sum of $1,220 and for its costs.

H. T. HAZARD,
City Attorney and Attorney for Plaintiff.

Duly verified.

Filed Sept. 28, 1882.

Answer.

(Title of court and cause.)

The defendant, answering the complaint herein, admits that the defendant is a corporation duly incorporated under the laws of the State of California, and says that it was incorporated and existing under the act of the Legislature of the State of California entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof and other matters relating thereto," approved May 20th, 1861, and the several acts supplementary thereto and amendatory thereof.

The defendant denies that on the 24th day of February, 1879, or since, it has maintained or controlled the railroad called the Southern Pacific railroad, or any other railroad, or that during that time any trains of cars drawn by steam-engines, or otherwise, have
43 by the defendant been caused to pass or repass loaded with freight or passengers, or otherwise, through the streets or any street of the city of Los Angeles. The defendant also denies that since the 24th day of February, 1879, it has, by its agents or otherwise, or for its own profit or benefit, or for pay or otherwise, conducted or carried on within the corporate limits of the city of Los Angeles the business incident to or connected with the carrying of freight or passengers on or by means of its steam railroad or otherwise; or that during that time it has maintained, controlled, or used for the purposes stated in the complaint, or at all, a depot within the corporate limits of said city of Los Angeles; or that by the terms of any ordinance or otherwise any steam railroad company having a depot in said city is required to pay to said city the sum of $60 per month or any sum; or that the defendant has conducted or carried on by its agents or otherwise any business in the corporate limits of said city; or that by the terms of any ordinance or otherwise the defendant is required to pay to the city of Los Angeles for the purposes mentioned in the complaint, or for any purposes or on any account, the sum of $60 per month, or any sum; or that the clerk of the council of said city ever issued to the defendant any license as alleged in the complaint or otherwise; or that during the months referred to
44 in the alleged license set out in the complaint [or] either of them, the defendant, for its profit or benefit or otherwise, or through its agents or otherwise, conducted or carried on any business of any kind within the corporate limits of Los Angeles city, or that the sums alleged in the complaint or any sum is due from the defendant to the plaintiff.

And for another and separate defense the defendant alleges as follows:

On the 24th day of October, 1872, the mayor and common council of the city of Los Angeles duly enacted and passed an ordinance in the words and figures following, to wit:

"An ordinance to submit to the voters of the city of Los Angeles the question of the sale and assignment of the stock held by the city in the Los Angeles and San Pedro Railroad Company:

"Whereas the board of supervisors of the county of Los Angeles

did, upon the second day of October, A. D. 1872, order that the question of donating county bonds and certain railroad stock to the Southern Pacific Railroad Company, for certain considerations in such order specified, be submitted to the voters of the county at the general election to be held November 5, 1872; and

45 "Whereas the delivery of the stock held by the city of Los Angeles in the Los Angeles and San Pedro Railroad Company, the same being to the amount of seventy-five thousand dollars, to the Southern Pacific Railroad Company, is one of the stipulations and conditions under which the said Southern Pacific Railroad Company agrees and contracts to fulfill the requirements and terms contained in the aforementioned order:

"Now, therefore, under the authority conferred by an act entitled 'An act to authorize the mayor and common council of the city of Los Angeles to take and subscribe seventy-five thousand dollars to the capital stock of the Los Angeles and San Pedro Railroad Company, in the county of Los Angeles, and to provide for the payment of the same, and other matters relating thereto,' approved February 1, 1868, section 18—

"The mayor and common council of the city of Los Angeles do ordain as follows:

"SECTION 1. At the general election of the State, to be held in the city and county of Los Angeles on the 5th day of November, 1872, it is hereby ordered that the question shall be submitted to the decision of the voters of the city of Los Angeles whether the

46 stock now owned and held by the said city of Los Angeles in the Los Angeles and San Pedro Railroad Company shall be sold, transferred, and delivered to the Southern Pacific Railroad Company, for and in consideration of the benefits and advantages conferred upon and derived by the said city of Los Angeles through the fulfillment of the conditions and stipulations contained in the aforementioned ordinance of the board of supervisors, and more particularly for and in consideration of the benefits and advantages conferred upon and derived by the city by the location of the passenger and freight depots and houses for the Los Angeles city station of the main trunk line of the Southern Pacific railroad within said city, and at some point on what is known as Alameda street, which point shall be selected by the mayor and common council of said city, and which shall not be further north upon said street than what is known as the slaughter-house, nor further south than what is or will be the intersection of the extension of Third street with said Alameda street; also for the benefit to be derived by the location and building of the workshops and other buildings, independent of the passenger and freight houses, within the city limits of said city of Los Angeles.

47 "Provided, That the Southern Pacific Railroad Company shall not be required to locate and build their passenger houses and freight depots and run their road to the same as a necessary consideration for the transfer and delivery of the aforementioned stock, unless there shall be deeded to said company, and the same recorded in the recorder's office of the county of Los Angeles,

and said deed put in possession of said company, a lot or parcel of land on said Alameda street, within said limits hereinbefore mentioned, which is immediately contiguous to the present depot of the Los Angeles and San Pedro railroad, so that the houses and lands of said company can be used in connection therewith, — shall not be less than ten acres, with not less than a frontage on said Alameda street of one thousand feet, and which, if located by said mayor and common council, either north or south of said depot of the Los Angeles and San Pedro railroad, so that the said houses and lands could not conveniently be used in connection therewith, shall not be less than fifteen acres in extent, with a frontage on said Alameda street of not less than one thousand (1,000) feet, and which lot or parcel of land thus selected shall not be of what is known as cienega—springy or marshy land; and

48 "Provided, That at some point on or properly contiguous to the line of the said trunk road of the Southern Pacific Railroad Company, within the city limits, there shall also be deeded as aforesaid not less than fifty (50) acres of land in one body, and either square or in outline not more than with a length equal to twice the breadth, and which land shall be suitable for the purposes of workshops and other buildings, and which deed, together with the deed for the ten or fifteen acres of land for passenger and freight houses, shall be made, recorded, and delivered on or before the first day of January, 1873; and

"Provided, That any and all right of way which said Southern Pacific Railroad Company may require in entering, passing through, and leaving the said city with the main trunk line be secured to them free of any claim for damages or other compensation; and

"Provided, That should the property hereinbefore provided for be not secured and deeded to the said Southern Pacific Railroad Company on or before the aforementioned first day of January, 1873, then the Southern Pacific Railroad Company shall be free to select any other point within the city limits for its depots and works, and

49 the stock of the Los Angeles and San Pedro Railroad Company now held by the city shall be transferred and delivered to said company for no further consideration than such locations and the considerations already made in the aforementioned order of the supervisors; and

"Provided, That in case the branch road to Anaheim, provided in said order of the supervisors, shall diverge from what is now known as the Los Angeles and San Pedro railroad, the same shall not be from a point on said road further south than what is known as Florence station, and that said branch line shall be so built as to make the station for what is known as the Los Nietos at some point which shall not be further south than a point midway between the town of Gallatin and a point known as the College in such region; and

"Provided, That in case the right of way is furnished free from such branch from Los Angeles to said station at Los Nietos, together with the depot lands at what shall be the Los Nietos station, of not less than ten acres in extent, the said branch shall be constructed

at least to said Los Nietos station within twelve months after the announcement of a favorable vote on these questions.

"SECTION 2. The voters of said city are hereby required
50 to vote upon this question at the same time and places as upon the other questions upon that day submitted to election, and they shall use a separate ballot, which shall have either the words 'For the transfer of the city railroad stock to the Southern Pacific Railroad Company,' written or printed thereon, or 'Against the transfer of the city railroad stock to the Southern Pacific railroad,' written or printed thereon, and which ballots shall be deposited by the judges of election in a separate ballot box. The custody, counting, and declaration of the results of the votes upon this question shall be governed and subject in all respects to the laws governing other elections of the city.

"SECTION 3. If at said election there shall be cast more votes or ballots with the words 'For the transfer of the city railroad stock to the Southern Pacific Railroad Company' thereupon than with the words 'Against the transfer of the city railroad stock to the Southern Pacific Railroad Company' thereupon, then and in that event it is hereby ordered that the mayor and common council for and in behalf of the city of Los Angeles, and for the consideration hereinbefore fully stated, and on a day which shall be the day six months subsequent to that day upon which the last install-
51 ment of county bonds, as provided in said order of the board of supervisors, shall be issued and delivered to the Southern Pacific Railroad Company, shall sell, transfer, and assign to said company all of the seventy-five thousand dollars held by the city in the capital stock of said Los Angeles and San Pedro Railroad Company.

"Provided, That said stock shall not be so assigned unless the said Southern Pacific Railroad Company shall have occupied and made use of, subject to hereinbefore-prescribed conditions, for the purposes specified, the ten or fifteen acres which shall have been deeded to said company on or before January 1, 1873, and also shall have connected the fifty acres provided for workshops and other kindred purposes by track within the main line, and shall have placed thereon, at least, the engine-houses sufficient for the business of the road at that time and are regularly using the same.

"SECTION 4. This ordinance of October 18, 1872, relating to the subject contained in this ordinance is hereby repealed.

"SECTION 5. This ordinance shall be in force from and after its passage, approval, and publication.

"Passed session October 24, 1872.

"Approved October 24, 1872.

"CHRISTOBAL AGUILAR, *Mayor.*"

52 The said ordinance was duly approved by the mayor and was duly published, as required by the law and the ordinances of said city.

Prior to the 2d day of October, 1872, the defendant entered into negotiations with the proper officials of the plaintiff and of the

county of Los Angeles with reference to building a railroad through the said county and city, the result of which was that the defendant proposed to build, operate, and maintain fifty-five miles of main track railroad through Los Angeles city and county, and also a connection with the town of Anaheim, and also to build at certain points in Los Angeles city a depot and certain workshops, etc., upon the conditions that the said county should grant to the defendant certain aid and that the city of Los Angeles should assign to it certain stock owned by the city in the Los Angeles and San Pedro Railroad Company, and should also grant to it certain lands and certain privileges for depot, workshops, and rights of way, which are more particularly specified in the ordinance hereinbefore set forth; and therefore the ordinance aforesaid and the order of the board of supervisors of Los Angeles county therein referred to were duly passed.

53 By the said order of the board of supervisors (which was passed under and by authority of an act of the Legislature entitled "An act to empower the board of supervisors of the several counties of the State to aid in the construction of a railroad in their respective counties," approved April 4, 1870, and the laws amendatory of and supplemental to the same) the question was submitted to the voters of said county, whether they should accept the proposition of the defendant and grant the aid proposed upon the terms and conditions specified; and upon the passage of said order the defendant entered into a written contract accepting the said conditions, and agreeing, in consideration of the aid and privileges to be granted to it, that it would, "under the conditions, stipulations, privileges, and provisos in the above order contained, build, operate, and maintain the railroad and connections in part and in whole therein provided."

Among other conditions and stipulations, requirements, privileges, and provisos provided in the said order was the stipulation and proviso that the city of Los Angeles should assign to it the stock, and grant it the lands and right of way and depot and other privileges specified in the ordinance hereinbefore set forth, and afterwards the said ordinance was passed with a view of accepting said contract by the city and carrying the same into effect.

54 At the general election next ensuing the order of the board of supervisors, the majority of voters of the county of Los Angeles voted in favor of accepting the proposal of defendant, and of granting to it the aid proposed, and the result, after a canvass of the vote, was duly declared to that effect, and so entered in the records of the board; and at the same election the voters of the city of Los Angeles, by a large majority, also accepted the said proposition, and the vote having been duly canvassed by the common council of the city of Los Angeles, the result was so declared, and duly entered in the records of the said council; and thereafter, under said order and ordinance, and said elections, the contract was carried into effect by the parties thereto; and under said contract the defendant built the road and connections, and said depots and workshops, as required by the said contract, and performed all the other conditions thereof.

On the 24th day of July, 1873, the mayor and common council of the city of Los Angeles passed an ordinance whereby, after reciting that by the ordinance of October 24th, 1872, the mayor and common council of the city of Los Angeles had obligated said city to give the defendant "a free right of way for its road through
55 said city," and such obligations had received the endorsement of a majority of the qualified voters of said city, and that the proper agents of the said defendant had selected as the lines for entering and leaving said city, and the necessary connections therewith, certain specified streets, it was ordained that the said streets (subject to certain conditions immaterial to to this case), should be, and thereby were, set apart from the public highways of the city of Los Angeles to the unreserved and unrestricted use of the defendant, and a right of way over and along the same should be granted to said company "for the building, maintaining, and operating of its railroad.

On the 21st day of December, 1872, the mayor and common council of the city of Los Angeles passed an ordinance whereby, after reciting that by the ordinance of October 24th, 1872, "it was, among other things, provided that, in consideration of the benefits and advantages conferred upon and derived by said city of Los Angeles by the location of the passenger and freight depots of the main trunk line within said city, and at some point at what is known as Alameda street, which point was to be selected by the mayor and common council of said city," etc., it was ordained that the tract of land now occupied by the defendant as a depot
56 should be and thereby was selected by the mayor and common council of the city of Los Angeles for the depot grounds of the defendant within said city for the passenger and freight depot of the defendant.

By the said ordinances the plaintiff, for a valuable consideration rendered by the defendant, granted to the defendant the right to construct its road, depots, workshops in the said city, and to operate the same, and to carry on its business connected with said road and depots in said city; and by virtue of said contract the defendant has the free and unrestricted right to operate its said roads, depots, and workshops, and carry on its said business within said city, free from any tax, license, or other imposition from the said city.

The ordinances set out in the complaint are in violation of the said contract, and impair the obligation thereof, and were, therefore, unauthorized and void; and, by reason of the said contract, the plaintiff is estopped from imposing any license or tax upon the defendant, or from demanding any sum from it for the privilege of maintaining its depots and carrying on its business within the said city.

For another and separate defense the defendant alleges as follows:

57 The defendant is a corporation existing under the laws of the United States and of the State of California (as hereinafter more fully alleged).

The principal place of business of defendant now is, and for many

years last past has been, in the city of San Francisco, State of California. A great number of its stockholders now are, and ever have been, citizens of the United States and residents of said State of California, while other of its stockholders now are, and ever have been, citizens of the United States and residents of other States than the State of California.

As such corporation, it constructed a line of railroad and procured the rolling-stock and all appurtenances thereunto belonging, known and distinguished as the Southern Pacific Railroad (of California), and described as follows: Commencing on the waters of the Pacific Ocean in the city and county of San Francisco, and extending in a southerly direction through portions of the county of San Francisco and through the county of Santa Clara, to Tres Pinos, in the county of San Benito, with a branch therefrom running from Carnadero, in the county of Santa Clara, to Soledad, in the county of Monterey; that said line of railroad also extends from Huron, in Fresno
58 county, to Goshen, in Tulare county, and thence in a southerly direction by the way of Tehichipa Pass, Mojave, and Los Angeles, to the Colorado river at Fort Yuma, with three branches from said line at Los Angeles, extending respectively to Santa Monica, Wilmington, and Santa Ana, in the county of Los Angeles. Said line of railroad is connected with the Texas and Pacific railroad at El Paso, in the State of Texas, by two railroads, to wit, the Southern Pacific railroad (of Arizona), extending from Fort Yuma to the eastern boundary line of Arizona, and the Southern Pacific railroad (of New Mexico), extending from said eastern boundary line across New Mexico to El Paso. The said several railroads are operated as one continuous line from a point near Marshall, in Texas, to the Pacific Ocean at San Francisco, for the uses and purposes and in the manner contemplated by the acts of Congress hereinafter referred to.

From Tres Pinos to Huron the said Southern Pacific railroad has not been completed, but, pending its construction, connection between said points is made over the lines of the Central Pacific railroad. Defendant has not completed the construction of the road from said Southern Pacific railroad to the Colorado river to
59 connect with the Atlantic and Pacific railroad, hereinafter referred to, but has the construction thereof under contract and will soon have completed a road from Mojave, on the line of the said Southern Pacific railroad, to the Colorado river, there to connect with said Atlantic and Pacific, and with the said Atlantic and Pacific when completed, making a continuous line from Springfield, in the State of Missouri, to the Pacific Ocean, as contemplated by the act of Congress, hereinafter referred to, chartering the Atlantic and Pacific Railroad Company.

On the 27th day of July, 1866, the Government of the United States undertook to construct or caused to be constructed a line of railroad from a point at or near the town of Springfield, in the State of Missouri, to the head waters of the Colorado Chiquita; and thence along the thirty-fifth parallel of latitude, as near as might be found suitable for a railroad, south to the Colorado river, at such point as might be se-

lected; and thence by the most practicable and eligible route to the Pacific Ocean; and to that end Congress passed an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," which act was approved on said 27th day of July, 1866, and to which act defendant here refers by title and makes it part of this
60 answer. (See U. S. Statutes at Large, vol. 14, page 292.) By said act certain persons therein named were made and elected into a corporation, under the name and style of the "Atlantic and Pacific Railroad Company."

The intent and purpose of Congress in passing said act was to secure the completion of a railroad from the Missouri river to the Pacific Ocean, with a branch to San Francisco, and to secure the use thereof for all time to come to the Government of the United States for the transportation of its mails, troops, munitions of war, and public stores.

To facilitate construction of said road the Government of the United States, by said act of Congress, adopted the defendant as the instrument or agent of the United States to carry out the purposes aforesaid, and conferred upon defendant the same powers and clothed defendant with the same privileges and immunities which it conferred upon and clothed the Atlantic and Pacific Railroad Company with, except that the defendant was to construct that portion of said railroad between the Colorado river and the city and county of San Francisco.

The said Atlantic and Pacific Railroad Company did organize under said act and did obtain *bona fide* subscriptions to the
61 stock of said company to the amount of one million dollars, with ten per centum, paid within two years after the passage and approval of said act of Congress; and the said company and plaintiff did, immediately after the passage of said act, accept the terms and conditions thereof, and that said company and defendant have duly complied therewith.

The said company has nearly completed, and will within a short time have fully completed, the whole of said road from Springfield to the Colorado river, and defendant has constructed said road as aforesaid to Mojave, with the exception hereinbefore set out, and is prosecuting the construction thereof from said Mojave to a junction with the road of the Atlantic and Pacific Company at the Colorado river, and that the whole of said road will be completed and in operation within the present year.

On the 3d day of March, 1871, the Government of the United States undertook to construct, or cause to be constructed, a line of railroad from Marshall, in the State of Texas, to San Diego, in the State of California, and from said line of road at the Colorado river to construct, or cause to be constructed, a line of railroad which would connect the road from Marshall to San Diego with the city of San Francisco, and to that end Congress passed an act en-
62 titled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes, approved March 3d, 1870," and subsequently, on the 2d

day of May, 1872, passed an act entitled "An act supplementary to an act entitled 'An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes,' approved March 3d, 1871;" to which acts defendant here refers by title, and makes them part of this answer.

(See vol. 16, U. S. Statutes at Large, 573; vol. 17 *Id.*, 59.)

Immediately after the passage of said act of March, 1871, the Texas Pacific railroad was organized in pursuance thereof, and defendant accepted all the terms and conditions of each of said acts of 1871 and 1872, and have fully and in every respect complied therewith, and under them, and in compliance with the spirit and intent of said acts, have completed the roads mentioned in the third subdivision of this complaint.

The declared purpose of Congress in passing said acts was to insure the carrying of the mails, troops, munitions of war, supplies and stores of the United States, and that Congress expressly
63 declared in said acts that no act of the companies, or either of them, nor any law of any State or Territory should ever impede, delay, or prevent the companies mentioned from performing their obligations to the United States in that regard.

And defendant, upon its information and belief, avers that if, by virtue of the several acts of Congress herein referred to, it did not become a Federal corporation, yet it holds under the Government of the United States all the corporate powers and franchises granted to it by the several acts of Congress as the trustee of said Government, and for the governmental uses and purposes specified in said act.

That under and by virtue of the said several acts of Congress hereinbefore referred to the plaintiff was, by the Government of the United States, selected as the means and instrument of that Government to construct the railroad hereinbefore described, and to keep and maintain the same in repair, to the end that the said Government might, when the occasion required, use the same for the transportation of its armies and military stores, and for such other purposes as said Government might, in the execution of its powers, desire to use the same; that the Government of the United States has never given to the State of California the right to lay
64 any tax upon the franchise, existence, or operations of defendant; that such a tax would hinder and impede the lawful operations of the Government of the United States, would hinder, delay, and prevent the defendant from performing, as aforesaid, its obligations to the United States, and would nullify and prevent the enforcement of the said several acts of Congress.

By the ordinances set out in the complaint the plaintiff has attempted to impose a tax upon the franchise and the operations of the defendant, and upon the rights of the defendant to perform the functions imposed upon it by the said acts of Congress, and in doing so the plaintiff has gone beyond its powers, and its action is unauthorized and void.

GLASSELL, SMITH & PATTON,
Defendant's Attorneys.

Duly verified.
Filed Dec. 23, 1882.

Findings.

(Title of court and cause.)

This cause came on regularly for trial on the 30th day of January, 1884, before the court without a jury, a jury trial having been
65 duly waived by the parties, W. D. Stephenson, city attorney for Los Angeles city, appearing as attorney for plaintiff, and Glassell, Smith & Patton, Esqs., for defendant, and from the evidence introduced the court finds the facts as follows, to wit:

I.

That all the allegations in the complaint on file herein in the said cause are true.

II.

That the defendant is a corporation duly incorporated under the laws of the State of California, and that it was incorporated and existing under the act of the Legislature of the State of California entitled "An act to provide for the incorporation of railroad companies, and the management of the affairs thereof and other matters relating thereto," approved May 20th, 1861, and the several acts supplementary thereto and amendatory thereof.

III.

That on the 24th day of October, 1872, the mayor and common council of the city of Los Angeles duly enacted and passed an ordinance in the words and figures following, to wit:

66 "An ordinance to submit to the voters of the city of Los Angeles the question of the sale and assignment of the stock held by the city in the Los Angeles and San Pedro Railroad Company.

"Whereas the board of supervisors of the county of Los Angeles did, upon the second day of October, A. D. 1872, order that the question of donating county bonds and certain railroad stock to the Southern Pacific Railroad Company for certain considerations in such order specified be submitted to the voters of the county at the general election to be held November 5, 1872; and

"Whereas the delivery of the stock held by the city of Los Angeles in the Los Angeles and San Pedro Railroad Company, the same being to the amount of seventy-five thousand dollars, to the Southern Pacific Railroad Company, is one of the stipulations and conditions under which the said Southern Pacific Railroad Company agrees and contracts to fulfill the requirements and terms contained in the aforementioned order:

"Now, therefore, under the authority conferred by an act entitled 'An act to authorize the mayor and common council of the
67 city of Los Angeles to take and subscribe seventy-five thousand dollars to the capital stock of the Los Angeles and San

Pedro Railroad Company,' in the county of Los Angeles, and to provide for the payment of the same, and other matters relating thereto,' approved February 1, 1868, section 18—

"The mayor and common council of the city of Los Angeles do ordain as follows:

"SECTION 1. At the general election of the State, to be held in the city and county of Los Angeles on the 5th day of November, 1872, it is hereby ordered that the question shall be submitted to the decision of the voters of the city of Los Angeles whether the stock now owned and held by the said city of Los Angeles in the Los Angeles and San Pedro Railroad Company shall be sold, transferred, and delivered to the Southern Pacific Railroad Company for and in consideration of the benefits and advantages conferred upon and derived by the said city of Los Angeles through the fulfillment of the conditions and stipulations contained in the aforementioned ordinance of the board of supervisors, and more particularly for and in consideration of the benefits and advantages conferred upon and derived by the city by the location of the passenger and freight depots
68 and houses for the Los Angeles city station of the main trunk line of the Southern Pacific railroad within said city, and at some point on what is known as Alameda street, which point shall be selected by the mayor and common council of said city, and which shall not be further north upon said street than what is known as the slaughter-house, nor further south than what is or will be the intersection of the extension of Third street with said Alameda street; also for the benefit to be derived by the location and building of the workshops, independent of the passenger and freight houses, within the city limits of said city of Los Angeles;

"Provided, That the Southern Pacific Railroad Company shall not be required to locate and build their passenger houses and freight depots and run their road to the same, as a necessary consideration for the transfer and delivery of the aforementioned stock, unless there shall be deeded to said company, and the same recorded in the recorder's office of the county of Los Angeles, and said deed put in possession of said company, a lot or parcel of land on said Alameda street within said limits hereinbefore mentioned, which is immediately contiguous to the present depot of the Los Angeles and San Pedro railroad, so
69 that the houses and lands of said company can be used in connection therewith, shall not be less than ten acres, with not less than a frontage on said Alameda street of one thousand feet, and which, if located or selected by said mayor and common council, either north or south of said depot of the Los Angeles and San Pedro railroad, so that the said houses and lands could not conveniently be used in connection therewith, shall not be less than fifteen acres in extent, with a frontage on said Alameda street of not less than one thousand (1,000) feet, and which lot or parcel of land thus selected shall not be of what is known as cienega, springy or marshy land; and

"Provided, That at some point on or properly contiguous to the line of the said trunk road of the Southern Pacific Railroad Company

within the city limits, there shall also be deeded as aforesaid not less than fifty (50) acres of land in one body, and either square or in outline, not more than with a length equal to twice the breadth, and which land shall be suitable for the purposes of workshops and other buildings, and which deed, together with the deed for the ten or fifteen acres of land for passenger and freight houses, shall be made, recorded, and delivered on or before the first day of January, 1873; and

70 "Provided, That any and all right of way which said Southern Pacific Railroad Company may require in entering, passing through, and leaving the said city with the main trunk line be secured to them free of any claim for damages or other compensation; and

"Provided, That should the property hereinbefore provided for be not secured and deeded to the said Southern Pacific Railroad Company on or before the aforementioned first day of January, 1873, then the Southern Pacific Railroad Company shall be free to select any other point within the city limits for its depots and works, and the stock of the Los Angeles and San Pedro Railroad Company now held by the city shall be transferred and delivered to said company for no further consideration than such locations and the considerations already made in the aforementioned order of the supervisors; and

"Provided, That in case the branch road to Anaheim provided in said order of the supervisors shall diverge from what is now known as the Los Angeles and San Pedro railroad, the same shall not be from a point on said road further south than what is known as Florence station, and that said branch line shall be so built as to make the station for what is known as the Los Nietos at some

71 point which shall not be further south than a point midway between the town of Gallatin and a point known as the College in such region; and

"Provided, That in case the right of way is furnished free from such branch from Los Angeles to said station at Los Nietos, together with the depot lands at what shall be the Los Nietos station, of not less than ten acres in extent, the said branch shall be constructed at least to said Los Nietos station within twelve months after the announcement of a favorable vote on these questions.

"SECTION 2. The voters of said city are hereby required to vote upon this question at the same time and places as upon the other questions upon that day submitted to election, and they shall use a separate ballot, which shall have either the words "For the transfer of the city railroad stock to the Southern Pacific Railroad Company" written or printed thereon, or "Against the transfer of the city railroad stock to the Southern Pacific railroad" written or printed thereon, and which ballots shall be deposited by the judges of election in a separate ballot-box. The custody, counting, and declaration of the results of the votes upon this question shall be governed and subject in all respects to the laws governing other elections of the city.

72 "SECTION 3. If at said election there shall be cast more votes or ballots with the words "For the transfer of the city railroad stock to the Southern Pacific Railroad Company" thereupon than with the words "Against the transfer of the city railroad stock to the Southern Pacific Railroad Company," thereupon, then, and in that event it is hereby ordered that the mayor and common council, for and in behalf of the city of Los Angeles, and for the consideration hereinbefore fully stated, and on a day which shall be the day six months subsequent to that day upon which the last installment of county bonds, as provided in said order of the board of supervisors, shall be issued to the Southern Pacific Railroad Company, shall sell, transfer, and assign to said company all of the seventy-five thousand dollars held by the city in the capital stock of said Los Angeles and San Pedro Railroad Company:

"Provided, That said stock shall not be so assigned unless the said Southern Pacific Railroad Company shall have occupied and made use of, subject to hereinbefore-prescribed conditions, for the purposes specified, the ten or fifteen acres which shall have been deeded to said company on or before January 1, 1873; and
73 also shall have connected the fifty acres provided for workshops and other kindred purposes by track within the main line, and shall have placed thereon, at least, the engine-houses sufficient for the business of the road at that time, and are regularly using the same.

"SECTION 4. The ordinance of October 18, 1872, relating to the subject contained in this ordinance is hereby repealed.

"SECTION 5. This ordinance shall be in force from and after its passage, approval, and publication.

"Passed session October 24, 1872.

"Approved October 24, 1872.

"CHRISTOBAL AGUILAR, *Mayor*."

The defendant is a corporation existing under the laws of the United States and of the State of California.

The principal place of business of defendant is, and for many years last past has been, in the city of San Francisco, State of California; a great number of its stockholders are now and ever have been, citizens of the United States and residents of the said State of California, while other of its stockholders are now, and ever have been, citizens of the United States, and residents of States other than the State of
74 California. As such corporation it constructed a line of railroad, and procured the rolling-stock and all appurtenances thereunto belonging, known and distinguished as the Southern Pacific Railroad of California, and described as follows:

Commencing on the waters of the Pacific Ocean, in the city and county of San Francisco, and extending in a southerly direction through portions of the county of San Francisco, and through the county of Santa Clara, to Tres Pinos, in the county of San Benito, with a branch therefrom running from Carnadero, in the county of Santa Clara, to Soledad, in the county of Monterey; that said line

of railroad also extends from Huron, in Fresno county, to Goshen, in Tulare county, and thence in a southerly direction by the way of Tehichipa Pass, Mojave, and Los Angelos city, to the Colorado river at Fort Yuma, with three branches from said line at Los Angeles, extending respectively to Santa Monica, Wilmington, and Santa Ana, in the county of Los Angeles. Said line of railroad is connected with the Texas and Pacific railroad at El Paso, in the State of Texas, by two railroads, to wit, the Southern Pacific railroad (of Arizona), extending from Fort Yuma to the eastern boundary line of Arizona, and the Southern Pacific railroad (of New Mex-
75 ico), extending from said eastern boundary line across New Mexico to El Paso. The said several railroads are operated as one continuous line from a point near Marshall, in Texas, to the Pacific Ocean at San Francisco, for the uses and purposes and in the manner contemplated by the acts of Congress hereinafter referred to.

From Tres Pinos to Huron the said Southern Pacific railroad had not been completed at the commencement of this action, but pending its construction, connection between said points is made over the lines of the Central Pacific railroad. Defendant, at the commencement of this action, had not completed the construction of the road from said Southern Pacific railroad to the Colorado river to connect with the Atlantic and Pacific railroad, hereinafter referred to, at the commencement of this action but had the construction thereof, at the commencement of this action, under contract, and would soon have, at the commencement of this action, completed a road from Mojave on the line of the said Southern Pacific railroad to the Colorado river, and now has completed a road from Mojave on the line of the Southern Pacific railroad to the Colorado river, there to connect with said Atlantic and Pacific, and with the said Atlantic and Pacific when completed,
76 making a continuous line from Springfield, in the State of Missouri, to the Pacific Ocean, as contemplated by the act of Congress hereinafter referred to chartering the Atlantic and Pacific Railroad Company.

The Congress of the United States passed an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast" before the commencement of this action, which said act was approved on said 27th day of July, 1866, and to which act this court here refers by title and makes a part of these findings, and to which act reference is hereby made by title, and the same is hereby made a part of these findings. By said act certain persons therein named were made and elected into a corporation under the name and style of the "Atlantic and Pacific Railroad Company."

The Government of the United States did not undertake to construct nor cause to be constructed, except by virtue of the said act of Congress last hereinbefore mentioned, a line of railroad from a point at or near the town of Springfield, in the State of Missouri, to the headwaters of the Colorado Chiquita, and thence along the 35th parallel of latitude as near as might be found suitable for a
77 railroad, south to the Colorado river at such point as might

be selected, and thence by the most practicable and eligible route to the Pacific Ocean, nor any part thereof.

The intent and purpose of Congress in passing said act was not to secure the completion of a railroad from the Missouri river to the Pacific Ocean, with a branch to San Francisco, nor to secure the use thereof for all time to come to the Government of the United States for the transportation of its mails, troops, and munitions of war, nor public stores. The Government of the United States, by said act of Congress, did not adopt the defendant as the instrument or agent of the United States to carry out the purposes aforesaid, to facilitate construction of said road or otherwise, but conferred upon defendant the same powers and clothed defendant with the same privileges and immunities which it conferred upon and clothed the Atlantic and Pacific railroad with, except that the defendant was to construct that portion of said railroad between the Colorado river and the city and county of San Francisco.

Prior to the second day of October, 1872, the defendant entered into negotiation with the proper officials of the plaintiff and of the county of Los Angeles with reference to building a railroad through the said county and city, the result of which was that the
78 defendant proposed to build, operate, and maintain fifty-five miles of main trunk railroad through Los Angeles city and county, and also a connection with the town of Anaheim, and also to build at certain points in Los Angeles city a depot and certain workshops, &c., upon the condition that the said county should grant to the defendant certain aid, and that the city of Los Angeles should assign to it certain stock owned by the city in the Los Angeles and San Pedro Railroad Company, and should also grant to it certain lands and certain privileges for depot, workshops, and rights of way, which are more particularly specified in the ordinance hereinbefore set forth; and thereupon the ordinance aforesaid and the order of the board of supervisors of Los Angeles county, therein referred to, were duly passed.

By the said order of the board of supervisors (which was passed under and by authority of an act of the Legislature entitled "An act to empower the board of supervisors of the several counties of the State to aid in the construction of a railroad in their respective counties," approved April 4th, 1870, and the laws amendatory of and supplemental to the same) the question was submitted to the voters of said county, whether they should accept the prop-
79 osition of the defendant and grant the aid proposed upon the terms and conditions specified, and upon the passage of the said order the defendant entered into a written contract accepting the said conditions and agreeing, in consideration of the aid and privileges to be granted to it, that it would, "under the conditions, stipulations, privileges, and provisos in the above order contained, build, operate, and maintain the railroad and connections, in part and in whole, therein provided."

Among other conditions and stipulations, requirements, privileges, and provisos provided in the said order was the stipulation and proviso that the city of Los Angeles should assign to it the stock and grant

to it the lands and right of way and depot and other privileges specified in the ordinance hereinbefore set forth, and afterwards the said ordinance was passed with a view of accepting said contract by the city and carrying the same into effect.

At the general election next ensuing the order of the board of supervisors the majority of voters in the county of Los Angeles voted in favor of accepting the proposal of defendant and granting to it the aid proposed, and the result after a canvass of the vote was duly declared to that effect, and so entered in the records of the board; and at the same election the voters of the city of Los
80 Angeles, by a large majority, also accepted the proposition, and the votes having been duly canvassed by the common council of the city of Los Angeles the result was so declared and duly entered in the records of the said council; and thereafter under said order and ordinance and said elections the contract was carried into effect by the parties thereto; and under said contract the defendant built the road and connections and its depots and workshops as required by the said contract, and performed all the other conditions thereof.

On the 24th day of July, 1873, the mayor and common council of the city of Los Angeles passed an ordinance whereby, after reciting that by the ordinance of October 24th, 1872, the mayor and common council of the city of Los Angeles had obligated said city to give the defendant "a free right of way for its road through said city," and such obligation had received the endorsement of a majority of the qualified voters of said city, and that the proper agents of the said defendant had selected as the lines for entering and leaving said city, and the necessary connections therewith, certain specified streets, it was ordained that the said streets (subject to certain conditions immaterial to this case) should be and thereby were set apart from the public highways of the city of Los Angeles to
81 the unreserved and unrestricted use of the defendant, and a right of way over and along the same should be granted to said company "for the building, maintaining, and operating of its railroad."

On the 21st day of December, 1872, the mayor and common council of the city of Los Angeles passed an ordinance whereby, after reciting that by the ordinance of October the 24th "it was, among other things, provided that in consideration of the benefits and advantages conferred upon and derived by said city of Los Angeles by the location of the passenger and freight depots of the main trunk line within said city, and at some point at what is known as Alameda street, which point was to be selected by the mayor and common council of said city," etc., it was ordained that the tract of land now occupied by the defendant as a depot should be, and thereby was, selected by the mayor and common council of the city of Los Angeles for the depot grounds of the defendant within said city for the passenger and freight depot of the defendant.

By the said ordinances the plaintiff, for a valuable consideration rendered by the defendant, granted to the defendant the right to construct its road, depots, [and] workshops in said city, and

82 to operate the same, and to carry on its business connected with said road and depots in said city; but by virtue of said ordinances and contract the defendant has not the free nor unrestricted rights to operate its said roads, depots, or workshops, or carry on its said business within said city free from any tax, license, or other imposition from said city.

VII.

The said Atlantic and Pacific Railroad Company organized under said act of Congress of July 27, 1866, herein mentioned, and obtained *bona fide* subscription to the stock of said company to the amount of one million dollars, with ten per centum paid within two years after the passage and approval of said act of Congress, and the said company and plaintiff did, immediately after the passage of said act, accept the terms and conditions thereof; and said company and defendant have duly complied therewith.

The said company at the commencement of this suit had nearly completed, and would have fully completed within a short time, and have since fully completed the whole of said road from Springfield to the Colorado river, and defendant at the commencement of this suit had constructed said road as aforesaid to Mojave,
83 with the exeeption hereinbefore set out, and at the commencement of this action was prosecuting the same, and has since constructed the same from said Mojave to a junction with the road of the Atlantic and Pacific company at the Colorado river, and the whole of said road is now completed and in operation at the time of the trial of this action.

VIII.

Immediately after the passage of said act of March 3, 1871, herein mentioned, the Texas and Pacific railroad was organized in pursuance thereof, and defendant accepted all the terms and conditions of said act of March 3, 1871, and the supplementary act of May 2, 1872, and have fully and in every respect complied therewith, and under them and in compliance with the spirit and intent of said acts have completed the roads mentioned in the fifth paragraph or subdivision of this stipulation.

IX.

The defendant was authorized to build its road from Tehichipa Pass via the city of Los Angeles by the Texas Pacific act above referred to, subject to the conditions of the Atlantic and Pacific act, and duly constructed the same under and in strict compliance with the provision of said acts, and their said road was duly ac-
84 cepted by the Government of the United States and the patents for its lands have been issued.

Prior to the commencement of this action Congress passed an act entitled "An act to incorporate the Texas and Pacific Railroad Company and aid in the construction of its road, and for other purposes, approved March 3rd, 1871," and subsequently, on the 2nd day of

May, 1872, passed an act entitled "An act supplementary to an act entitled An act to incorporate the Texas and Pacific Railroad Company and to aid in the construction of its road, and for other purposes, approved March 3rd, 1871;" to which acts this court here refers by title and makes them part of these findings, and to which reference is hereby and herein made by title and the same are hereby made part of these findings; but not otherwise than by the said acts did the Government of the United States, on the 3rd day of March, 1871, or at all, undertake to construct or cause to be constructed a line of railroad from Marshall, in the State of Texas, to San Diego, in the State of California, nor from said line of road at the Colorado river to construct or cause to be constructed a line of railroad which would connect the road from Marshall to San Diego, or otherwise, or at all, or any part thereof.

85 The business referred to in findings herein, as carried on by the defendant, and within the corporate limits of the city of Los Angeles, is carried on by the defendant between its depot in the said city of San Francisco, intervening points in one direction between said depot and El Paso, in New Mexico, and intervening points in another direction between said depot and Wilmington, and intervening points in another direction; and no business is carried on between points in Los Angeles, except as part of the transportation of freight and merchandise between the said depot and points outside of the city; and no changes have in any case been made for the transportation of freight and merchandise between points in the city.

The court further finds that there was no consideration paid, or contracted to be paid, by the defendant to the county or city, or either of them, to the plaintiff for exemption from taxation.

The defendant, under and by virtue of, or under or by virtue of, the several or any acts of Congress hereinbefore referred to or otherwise became, or ever since has been, or ever has been, a Federal corporation, or has held its franchise or exercised all or any of its corporate powers under the Government of the United States.

86 It does not hold, under the Government of the United States, all or any of its corporate powers and franchises granted to it by the several or any acts of Congress hereinbefore referred to as the trustee of the said Government, or for the governmental uses and purposes, or uses or purposes, or of any of them, specified in said acts, or any one or more of them referred to in the complaint herein and in these findings.

That the plaintiff was not, nor was the defendant, selected by the Government of the United States under and by virtue of, or under or by virtue of, *or under or by virtue of*, said or any acts of Congress as the means and instrument of said Government to construct the railroad hereinbefore described, or to keep and maintain, or to keep or maintain, the same in repair, to the end that the said Government might, when occasion required, use the same for the transportation of its armies or military stores, or for such other purposes

as said Government might, in the execution of its powers, or otherwise, desire to use the same.

That the Government of the United States has given to the State of California the right to levy a tax upon the franchise, existence, and operations of defendant.

87 That such Government of the United States did not adopt defendant to facilitate construction of said road as the instrument or agent of the United States to carry out said purposes or any of them, but did confer upon defendant the same powers and clothe defendant with the same privileges and immunities which it conferred upon and clothed the Atlantic and Pacific Railroad Company with, except that the defendant was to construct that portion of said railroad between the Colorado river and the city and county of San Francisco.

The declared purpose of Congress in passing said acts was to insure the carrying of the mails, troops, munitions of war, supplies, and stores of the United States, and that Congress expressly declared in said acts that no act of the companies, or either of them, nor any law of any State or Territory, should ever impede, delay, or prevent the companies mentioned from performing their obligations to the United States in that regard.

And as conclusions of law from the foregoing facts the court finds that the tax described in said complaint and these findings would not hinder nor impede the operations of the Government of the United States; would not hinder, delay, nor prevent the defendant from performing as aforesaid or otherwise its obligations

88 or any of them to the United States, nor would nullify nor prevent the enforcement of the said acts of Congress or any of them.

By the ordinance set out in the complaint herein the plaintiff has attempted to impose a tax upon the franchise and the operations of the defendant and upon the right of the defendant to perform the injunctions imposed upon it by the said acts of Congress, and in doing so the plaintiff has not gone beyond its powers, and its action is not unauthorized nor void.

By virtue of said ordinances and contract the defendant has not the free or unrestricted right to operate its roads or depots or workshops, or carry on its said business within said city free from any tax, license, or other imposition from the said city.

The defendant, under and by virtue of, or under or by virtue of, the several or any acts of Congress hereinbefore referred or otherwise became, or ever since has been, or ever has been, a Federal corporation, or has held its franchise or exercised all or any of its corporate powers under the Government of the United States.

Defendant does not hold under the Government of the United States all or any of its corporate powers and franchises granted to it by the several or any acts of Congress hereinbefore referred

89 to as the trustee of the said Government or for the governmental uses and purposes, or uses or purposes, or of any of them, specified in said acts, or any one or more of them.

That the plaintiff was not, nor was the defendant, selected by the

Government of the United States under and by virtue of, or under or by virtue of, said or any acts of Congress as the means and instrument, or means or instrument, of said Government to construct the railroad hereinbefore described, or to keep and maintain, or to keep or maintain, the same in repair, to the end that the said Government might, when occasion required, use the same for the transportation of its armies or military stores, or for such other purposes as said Government might, in the execution of its powers, or otherwise, desire to use the same.

That the Government of the United States has given to the State of California the right to lay a tax upon the franchise, existence, and operations of defendant.

That said Government of the United States did not adopt defendant to facilitate construction of said road, as the instrument or agent of the United States to carry out the said purposes, or any of them.

That the tax described in these findings and the pleadings
90 herein would not hinder nor impede the lawful operations of the Government of the United States; would not hinder, delay, nor prevent the defendant from performing as aforesaid, or otherwise, its obligation to the United States, and would not nullify nor prevent the enforcement of the said act of Congress, nor any of them; that all the allegations of the complaint are true.

That there is now due and owing from defendant to plaintiff the sum of $1,220, current money of the United States.

Let judgment be entered accordingly.

V. E. HOWARD,
Judge of said Court.

Filed July 2nd, 1884.

Judgment.

(Title of court and cause.)

This action came on regularly for trial on January 30th, 1884. The said parties appeared, by their attorneys, W. D. Stephenson, counsel for plaintiff, and Glassell, Smith & Patton for defendant. A jury having been expressly waived by the respective parties the cause was tried by the court without a jury, whereupon witnesses on the part of the plaintiff and defendant, respectively, were
91 sworn and examined and documentary evidence introduced by the respective parties, and the evidence being closed, the cause was submitted to the court for consideration and decision, and after due deliberation thereon the court files its findings and decision in writing, and orders that judgment be entered herein in favor of plaintiff in accordance therewith.

Wherefore, by reason of the law and the findings aforesaid, it is ordered, adjudged, and decreed that the City of Los Angeles, plaintiff, do have and receive of and from the Southern Pacific Railroad Company, defendant, the sum of twelve hundred and twenty dollars, together with plaintiff's costs and disbursements incurred in this action, amounting to the sum of $13.40.

Judgment recorded July 2d, 1884, in book 5, page 389.

Filed July 2, 1884.

Notice of Intention to Move for New Trial.

(Title of court and cause.)

Please take notice that defendant intends to move the court to set aside and vacate the judgment and findings heretofore
92 made herein and to grant a new trial in this case upon the following grounds, viz:

I.

Insufficiency of the evidence to justify the findings and decision of the court, and that the same are against law.

II.

Errors in law occurring at the trial and excepted to by the defendant.

The said motion will be made upon a statement of the case.

GLASSELL, SMITH & PATTON,
Attorneys for Defendant.

To Walter D. Stephenson, attorney for plaintiff.

Due service of the within notice is hereby admitted this 12th day of July, 1884.

W. D. STEPHENSON,
Attorney for Plaintiff.

Filed July 12th, 1884.

93 *Statement on Motion for New Trial.*

(Title of court and cause.)

The defendant in this case having filed his notice of intention to move for a new trial, specifying as the grounds of said motion

First. Insufficiency of the evidence to justify the findings and decision of the court, and that the same are against law; and, secondly, errors in law occurring at the trial and excepted to by defendant, the said defendant now specifies the following as particulars wherein the evidence was insufficient to sustain said findings and decisions of the court.

Specifications of the Insufficiency of the Evidence.

I.

The evidence was insufficient to sustain the first finding of the court, viz., that all the allegations in the complaint are true, and especially the evidence did not justify the said finding with reference to the following allegations of the complaint, to wit:

1st. The allegations that the ordinances set out — the complaint were duly made, passed, adopted, and approved by *the* virtue
94 of the law and charter of the city of Los Angeles; also the allegations that the said ordinances afterwards took effect and

were enforced; also the allegation that by the terms of said ordinance first stated every steam railroad having [a] depot in said city was required to pay the said city the sum of $60 per month license, and also the allegation that by the terms of the ordinance secondly set out in the complaint every steam railroad having a depot in said city was required to pay the said city the sum of $40 per month license.

2d. The allegation that by the terms of said ordinance the licenses therein provided for were or are due or payable on the first Monday of each month in advance, or at all.

3d. That the defendant has, since the period stated in paragraph 12 of the complaint, conducted and carried on within the corporate limits of the city of Los Angeles the business incident to and connected with the carrying of freight and passengers on and by means of its steam railroad; but the evidence shows that the business of the defendant has been carried on between its depot, in the city of Los Angeles, and points outside of the said city, and also outside of the State of California.

4th. The allegation that by the terms of the ordinance which
95 was approved Feb. 4th, 1879, the defendant was required to pay for the right to carry on and engage in the business incident to and connected with the steam railroad with a depot in said city the sum of $60 per month.

5th. Also the allegation that the clerk of the council of said city issued to the defendant the licenses specified in the 16th paragraph of the complaint.

6th. Also the allegation that by the terms of the ordinance approved April 25th, 1881, the defendant was required to pay for the right to carry on and engage in the business incident to and connected with a steam railroad with a depot in said city *for* the sum of $40 per month.

7th. Also the allegation that the clerk of the council of said city issued to the defendant the licenses specified in paragraph 22 of the complaint.

8th. Also the allegation that the amount of $1,220 is due from the defendant to the plaintiff.

II.

The evidence was insufficient to justify the second finding in so far as it implies that it was incorporated exclusively under the laws of the State of California, as it appears from the evidence that it was
96 also incorporated and derived its corporate power under and by virtue of the acts of Congress enumerated in the stipulation on file in the case and hereinafter inserted.

III.

The evidence does not justify the finding that there was no consideration paid or contracted to be paid to the county or city for exemption from taxation; but, on the contrary, it appears from the evidence that there was a consideration contracted to be paid and

paid by the defendant to the city for the privilege of maintaining its depots and its road, and for operating its road through the said city, and for the exemption from any license taxes therefor.

IV.

The evidence is also insufficient to justify the finding that the dedefendant does not hold all or any of its corporate powers and franchises granted to it by the acts of Congress referred to as the trustee of the said Government, or the finding that it does not hold such corporate powers and franchises for the governmental uses and purposes, or uses and purposes, or any of them, specified in said acts, or any one or more of them, referred to in the complaint herein and in these findings.

97

V.

The evidence is also insufficient to justify the finding that the defendant was not selected by the Government of the United States under and by virtue of the said acts of Congress as the means and instrument of said Government to construct the railroad described in the findings and to keep and maintain the same in repair, to the end that the said Government might, when occasion required, use the same for the transportation of its armies or military stores, or for such other purposes as said Government might, in the execution of its powers or otherwise, desire to use the same.

VI.

The evidence did not justify the finding that the Government of the United States has given to the State of California a right to levy a tax upon the franchise, existence, and operations of defendant.

VII.

The evidence was also insufficient to justify the finding that the Government of the United States did not adopt the defendant to facilitate construction of said road as the instrument or agent of the United States to carry out said purposes or any of them.

98

VIII.

The evidence was insufficient to justify the finding that the tax described in the complaint and in these findings would not hinder or impede the operations of the Government of the United States; or the finding that it would not hinder, delay, nor prevent the defendant from performing its obligations or any of them to the United States; or the finding that it would not modify or prevent the enforcement of the said acts of Congress or any of them; or the finding that in enacting the said ordinance the plaintiff has not gone beyond its powers; or the finding that by virtue of said ordinances and contract the defendant has not the free and unrestricted right to operate its roads, depots, and workshops, and carry on its said business within said city free from any tax, license, or other

imposition therefor from the said city; or the finding that the defendant does not hold under the Government of the United States any of its corporate powers and franchises as the trustee of said Government, or for the governmental uses and purposes specified in said acts; or the finding that there is now due and owing from the defendant to the plaintiff the sum of $1,220, current money of the United States.

99 *Statement of the Proceedings in Evidence.*

This cause came on regularly for trial on the 30th day of January, 1884, and was tried by the court without a jury. On the trial the plaintiff read in evidence a written stipulation signed by the attorneys of the respective parties, which was in the words and figures following, to wit:

(Here follows the first three paragraphs of the complaint, folios 3 to 46, in the same words as they therein appear.)

IV.

That said ordinance had not since February 24th, 1879, been altered, modified, amended, changed, set aside, or repealed until April 26th, 1881.

(Here follows the sixth paragraph of the complaint, folios 47 to 88, in the same words as it therein appears.)

VII.

That said last-named ordinance has not since said 23d day of April, 1881, been altered, modified, amended, changed, set aside, or repealed.

(Here follows paragraph 14, folios 96, 7, and paragraphs 16 to 20, both inclusive, folios 99, 106 of the complaint, in the same words as
100 they therein appear; and also paragraph 22 of the complaint in the same words as therein written, folios 107–8, except that after the word "issued" there are inserted the words "for delivery;" and also paragraph 23 of the complaint as the same is therein written, folios 109–10, except that the word "stipulation" is inserted in lieu of "complaint;" and also paragraphs 24 to 27 of the complaint, folios 111–116, in the same words as therein written, except that the words "but is still due plaintiff" is omitted from the last clause of paragraph 27.

E. E. HEWITT sworn, and testified on the behalf of the plaintiff as follows:

I am assistant superintendent of the Southern Pacific Railway Company. The Southern Pacific Railroad Company, on the 24th day of February, 1879, was, ever since has been, and now is, doing business as a steam railroad company in the State of California. The said railroad company has depots at various points along its line from San Francisco to El Paso, including the city of Los An-

geles, and in the city limits of said city. I have been living in the said city of Los Angeles as the agent of the said company on the 24th day of February, 1879, and ever since. The Southern
101 Pacific Railroad Company, on the 24th day of February, 1879, and ever since, maintained and controlled a steam railroad for the Southern Pacific railroad, and the said railroad during such times entered and passed through a portion of the city of Los Angeles, and had its depots there and the trains of cars drawn by the steam-engine of the said defendant, The Southern Pacific Railroad Company, were caused to pass and repass loaded with freight and passengers daily through and out of said city of Los Angeles.

Q. And it is true that the Southern Pacific Railroad Company, ever since the 24th day of February, 1879, by its agents, and for its own profit and benefit, and for pay in lawful money of the United States, conducted and carried on, and within the corporate limits of the city of Los Angeles, the business incident to and connected with the carrying of freight and passengers?

A. Yes, sir; done a railroad business.

Q. Well, just so. What is the answer to that question?

A. Did you ask if we have done any business in the city limits as to between intermediate points in the city?

Q. No, sir; I didn't ask that. I know it has not. We have stipulated that is not so.

102 A. Then, I don't understand your question.

Q. (Repeated.) And is it true that the Southern Pacific Railroad Company, ever since the 24th day of February, 1879, by its agents, and for its own profit and benefit, and for pay in lawful money of the United States, conducted and carried on, and within the corporate limits of the city of Los Angeles, the business incident to and connected with the carrying of freight and passengers?

A. It has.

Q. And that was done with and by means of its said steam railroad?

A. Yes, sir.

Q. And that the said defendant ever since that said date has maintained, owned, controlled, and used, for the purposes connected with the business of carrying freight and passengers on their said steam railroad in and through said city, a depot located within the corporate limits of the city of Los Angeles?

A. It has.

Q. Is it true that the Southern Pacific Railroad Company has conducted and carried on its said business by its agents, and within the corporate limits of the said city of Los Angeles, at the same time having a depot in said city, during each and every month, every one of said months from and including the month of
103 August, 1880, up to and including the month of September, 1882, and to the date of the filing of this complaint, for its own profit and benefit?

A. It has.

With which evidence the plaintiff rested.

Thereupon the defendant read in evidence a written stipulation, signed by the attorney of the respective parties, in the words and figures following:

In the Superior Court of the County of Los Angeles, State of California.

THE CITY OF LOS ANGELES, Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, Defendant.

It is stipulated that the following facts are true:

1. The defendant became a corporation on the second day of December, 1865, under a general law of the State of California, passed on the twentieth day of May, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto." It was
104 formed, as stated, in its articles of incorporation, "for the purpose of constructing, owning, and maintaining a railroad from some point on the Bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles, and San Diego to the town of San Diego, in said State; thence eastward through the said county of San Diego to the eastern line of the State of California, there to connect with a contemplated railroad from the eastern line of the State of California to the Mississippi river."

2. The acts of Congress of the United States and the acts of the Legislature of the State of California, below named, were enacted at the dates specified below; and the same as they appear in the volumes of the United States Statutes and the statutes of California, at the pages specified, are here referred to and made part of this stipulation as fully as if the same were incorporated at length herein:

An act of Congress passed July 27, 1866, entitled "An act granting land to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas."
14 U. S. Stats. at Large, p. 292.

105 An act of Congress passed June 25, 1868, entitled "An act relative to filing reports of railroad companies."
15 U. S. Stats. at Large, p. 79.

A joint resolution passed June 28, 1878, entitled "Joint resolution concerning the Southern Pacific railroad of California."
16 U. S. Stats. at Large, 382.

An act of Congress passed March 3, 1871, and entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road and for other purposes."
16 U. S. Stats. at Large, 573.

An act of Congress passed May 2, 1872, entitled "An act supplementary to an act entitled 'An act to incorporate the Texas Pacific

Railroad Company and to aid in the construction of its road and other purposes.'"

17 U. S. Stats. at Large, 59.

An act of the Legislature of the State of California passed March 1, 1870, entitled "An act relating to certificates of incorporation."

Statutes of California, 1869–70, p. 107.

106 And an act of the Legislature of the same State passed April 4, 1870, entitled "An act to aid in giving effect to an act of Congress relating to the Southern Pacific Railroad Company."

Statutes of Cal. for 1869–'70, p. 883.

3. In less than six months after the passage of the act of July 27, 1866, above referred to, to wit, on the third day of January, 1867, pursuant to the third section of said act, the defendant filed a map of the line of road which it proposed to construct under said act in the office of the Commissioners of the General Land Office. The line delineated on this map commences near the southern end of the Bay of San Francisco and passes through the counties of Santa Clara, Monterey, Fresno, Tulare, Los Angeles (as the counties of Tulare and Los Angeles were then located), and the county of San Bernardino, to a point on the Colorado river near the thirty-fifth parallel of north latitude, thus passing through all the counties named in said articles of association except San Luis Obispo, which was avoided by a deflection to the eastward, and San Diego, which lies below the thirty-fifth parallel. This deflection carries the line through the counties of Fresno and San Bernardino, instead
107 of San Luis Obispo and San Diego, but the line passes through all the other counties named in said articles of association—the northern portion of Los Angeles county, as it existed at the date of the filing of said articles, being now the southern portion of Kern county, but the said road does not pass through the city of Los Angeles.

4. On the 15th of April, 1871, acting under and by virtue of the law of the State of California of 1st of March, 1870, above referred to, in relation to the amendment of the articles of association, and also under and by virtue of the special act of the Legislature of California of the 4th of April, 1870, above referred to, in relation to the defendant and its rights under said Atlantic and Pacific act, the defendant amended its articles of association so as to take in the line delineated on its map of January 3, 1867, and also the line from Tehichipa Pass by way of the city of Los Angeles to the Texas Pacific road at the Colorado river, near the thirty-second parallel of north latitude.

5. Prior to the commencement of this suit the defendant constructed a line of railroad, procured the rolling-stock and all appurtenances thereunto belonging, known and distinguished as the Southern Pacific railroad (of California) and described as follows: Commencing on the waters of the Pacific Ocean in the city
108 and county of San Francisco and extending in a southerly direction through portions of the county of San Francisco,

and through the county of Santa Clara to Tres Pinos, in the county of San Benito, with a branch therefrom running from Carnadero, in the county of Santa Clara, to Soledad, in the county of Monterey. Said line of railroad also extends from Huron, in Fresno county, to Goshen, in Tulare county, and thence in a southerly direction by way of Tehichipa Pass, Mojave, and the city of Los Angeles to the Colorado river and Fort Yuma, with three branches from said line at Los Angeles, extending respectively to Santa Monica, Wilmington, and Santa Ana, in the county of Los Angeles. Said line of railroad is connected with the Texas and Pacific railroad at El Paso, in the State of Texas, by two railroads, to wit: the Southern Pacific railroad (of Arizona), extending from Fort Yuma to the eastern boundary line of Arizona, and the Southern Pacific railroad (of New Mexico), extending from said eastern boundary line across New Mexico to El Paso. The said several railroads are operated as one continuous line from a point near Marshall, in Texas, to the Pacific Ocean at San Francisco, for the uses and purposes and in the manner contemplated by the acts of Congress hereinafter referred to.

109 Defendant, at the commencement of this suit, had not completed the construction of the road from said Southern Pacific railroad to the Colorado river to connect with the Atlantic and Pacific railroad, hereinafter referred to, but had the construction thereof under contract and has now completed a road from Mojave, on the line of the said Southern Pacific railroad, to the Colorado river, there to connect with said Atlantic and Pacific, and with the said Atlantic and Pacific, when completed, making a continuous line from Springfield, in the State of Missouri, to the Pacific Ocean, as contemplated by the act of Congress hereinbefore referred to chartering the Atlantic and Pacific Railroad Company.

6. The said roads were constructed under and in compliance with the provisions of the acts of Congress referred to in the second paragraph.

7. The said Atlantic and Pacific Railroad Company organized under said act of Congress of July 27, 1866, and obtained *bona fide* subscriptions to the stock of said company to the amount of one million dollars, with ten per centum paid within two years after the passage and approval of said act of Congress; and the said company and plaintiff did immediately after the passage of said

110 act accept the terms and conditions thereof, and said company and defendant have duly complied therewith.

The said company at the commencement of this suit had nearly completed, and have since fully completed, the whole of said road from Springfield to the Colorado river; and defendant at the commencement of this suit had constructed said road as aforesaid to Mojave, with the exception hereinbefore set out, and has since constructed the same from said Mojave to a junction with the road of the Atlantic and Pacific Company at the Colorado river, and the whole of said road is now completed and in operation.

8. Immediately after the passage of said act of March 3d, 1871, the Texas Pacific railroad was organized in pursuance thereof, and defendant accepted all the terms and conditions of said act of March

3d, 1871, and the supplementary act of May 2, 1872, and have fully and in every respect complied therewith, and under them and in compliance with the spirit and intent of said acts have completed the roads mentioned in the fifth parragraph or subdivision of this stipulation.

9. The defendant was authorized to build its road from Tehichipa Pass via the city of Los Angeles by the Texas Pacific act above
111 referred to, subject to the conditions of the Atlantic and Pacific act, and duly constructed the same under and in strict compliance with the provisions of said acts, and their said road was duly accepted by the Government of the United States, and the patents for its lands have been issued.

WALTER D. STEPHENSON,
Attorney for Plaintiff.
GLASSELL, SMITH & PATTON,
Attorneys for Defendant.

Filed January 30, 1884.

The defendant then read in evidence certified copies of the minutes of the board of supervisors of Los Angeles county, of date, August 6th, October 2d, and November 11th, 1872, which were in words and figures following, to wit:

TUESDAY, *August 6th*, 1872.

Whereas, under an act entitled An act to empower the board of supervisors of the several countries of the State to aid in the construction of a railroad in their respective counties, approved April 4th, 1870; and "An act supplemental to an act to empower the board of supervisors of the several counties of the State to aid in the construction of a railroad in their respective counties,
112 approved April 4th, 1870;" and an act entitled "An act to repeal an act entitled an act to empower the board of supervisors of the several counties of the State to aid in the construction of a railroad in their respective counties, approved April 4th, 1870," and an act entitled "An act supplemental to an act to empower the board of supervisors of the several counties of the State to aid in the construction of a railroad in their respective counties, approved April 4, 1870," except as to certain counties therein named, approved March 21, 1872, the county of Los Angeles is empowered to donate its county bonds in aid of and for and in consideration of the construction of a railroad within its borders, such donation not to exceed five per cent. upon the total amount of the last assessment as returned to the board prior to an election for the purpose of deciding such donation; and

Whereas the total assessment, as above provided for, amounts for the year 1872 to ten millions seven hundred thousand dollars, and upon which five per cent. amounts to five hundred and thirty-five thousand dollars, and from which amount thus last named, in accordance with the provisions of the hereinbefore-mentioned acts, the sum of one hundred and fifty thousand ($150,000) dollars, heretofore issued in county bonds to the Los Angeles and San
113 Pedro Railroad Company, is deducted, leaving the net amount

of three hundred and eighty-five thousand dollars in bonds, which the county is entitled to vote for the purpose above specified; and

Whereas, for and in consideration of this three hundred and eighty-five thousand dollars in bonds, together with all the stock, were held by the city and county in the Los Angeles and San Pedro Railroad Company, being in amount two hundred and twenty-five thousand dollars ($225,000), the Southern Pacific Railroad Company, a company duly authorized and existing under the laws of the State of California, is ready and willing, under conditions to be hereinafter stipulated, to build fifty miles of its main trunk line through this county and the city of Los Angeles, and also to construct a connection between Anaheim and the railroads of the county: Now,

Therefore, and under the authority conferred by the hereinbefore-mentioned acts, the board of supervisors of the county of Los Angeles orders:

SECTION 1. That at the general election to be held in the county of Los Angeles on the fifth day of November, 1872, there will be submitted, and the same is hereby ordered to be submitted,
114 to the qualified voters of the county of Los Angeles the question whether the said county of Los Angeles shall issue and deliver to the Southern Pacific Railroad Company, a company duly authorized and existing under the laws of the State of California, its successors or assigns, the bonds of said county, under the conditions hereinafter stipulated, in aid of and for and in consideration of the construction by said company, its successors or assigns, of fifty miles of the main trunk line of the Southern Pacific railroad within said county, and on the route of said road from San Francisco, through the city of Los Angeles and eastward through the valley of San Bernardino, to the Colorado river at or near Fort Yuma; also whether upon the completion of said fifty miles of said road, and for and as part of the consideration for the same, the county of Los Angeles will sell, transfer, and assign to the Southern Pacific Railroad Company, its successors or assigns, the one hundred and fifty thousand ($150,000) dollars in the stock of the Los Angeles and San Pedro Railroad Company were held by the county.

SEC. 2. The votes upon this question shall be given at the same place in all precincts of the county as the votes upon other questions submitted to election upon the day above specified, and shall be subject in all respects to the same rules and regulations
115 which govern the general elections of the State. Every ballot cast in favor of the above propositions shall have the words "For the railroad" written or printed thereon, and every ballot cast in opposition to the above proposition shall have the words "Against the railroad" written or printed thereon; and for convenience these words may be added to the general tickets or ballots used upon such fifth day of November in the decision of the other questions there submitted to election, and such additions thereupon shall cause such general tickets or ballots to be counted in the decision of these propositions above stated.

SEC. 3. If at said election a greater number of the electors of the county voting on the proposition shall vote "For the railroad" than shall vote "Against the railroad" then the board of supervisors shall, under the following conditions and stipulations, sell, assign, and transfer to the Southern Pacific Railroad Company, its successors or assigns, the aforementioned one hundred and fifty thousand dollars ($150,000) in the stock of the Los Angeles and San Pedro Railroad Company, now held by the county, and in amounts hereinafter stipulated, will issue and deliver to said Southern Pacific Railroad Company, its successors or assigns, the bonds of said county bearing seven per cent. per annum interest, payable semi-annually,
116 both principal and interest payable in United States coin. Upon the affidavit of the engineer in charge of the construction of the road that five miles of said road have been constructed in a good and workmanlike manner from the initial point in the city of Los Angeles, and that engines and cars can be operated thereon with safety, then the board of supervisors of the county of Los Angeles will issue to such railroad company, its successors or assigns, thirty-eight bonds of the county of Los Angeles of the denomination of one thousand dollars each; and as each succeeding five miles of track is constructed in like manner, and engines and cars are running thereon with safety, and the affidavit of the engineer in charge relating thereto is received, the board of supervisors will in like manner for each section of five miles thus constructed and in operation, in direction either northerly or easterly, as hereinafter provided, issue and deliver to the said Southern Pacific Railroad Company, its successors or assigns, thirty-eight bonds of said county; upon the completion in like manner of the tenth or last section of the fifty miles hereinbefore provided for the board of supervisors will issue and deliver to the said Southern Pacific Railroad Company, its successors or assigns, forty-three bonds of
117 the county, which will make the aggregate number of bonds thus issued and delivered to said railroad company three hundred and eighty-five, being the amount of the five per cent. on the total assessment of the county for the year 1872, less the amount of one hundred and fifty thousand dollars in bonds heretofore issued to the Los Angeles and San Pedro Railroad Company, and, together with the issue and delivery of this final instalment of forty-three bonds, the board of supervisors will, without further additional consideration than the construction as aforesaid of the fifty miles of trunk road of said Southern Pacific Railroad Company, and the obligation on the part of said company to construct a railroad connection as hereinafter provided with Anaheim, sell, transfer, assign, and deliver to said Southern Pacific Railroad Company, its successors or assigns, all of the one hundred and fifty thousand dollars in the stock held by the county in the capital stock of the Los Angeles and San Pedro Railroad Company:

Provided, That the completion, as hereinbefore provided, of said fifty miles of trunk road of said Southern Pacific Railroad Company shall be effected and accomplished within fifteen months after the declaration and announcement by the board of supervisors of a

favorable vote upon the questions herein submitted shall
118 have been made, and the entire connection between the city of Los Angeles and the city of San Francisco shall be made through and to that portion of the road extending northerly from Los Angeles city, and as early as the obstacles to be overcome and the means and facilities of the company will allow, but in not exceeding five years from such announcement; and

Provided further, That of the fifty miles of road hereinbefore stipulated to be built in the county of Los Angeles such portion of said fifty miles shall be constructed on the line leading northerly towards San Francisco as shall extend at least to San Fernando Pass, as designated by the chief engineer of said Southern Pacific Railroad Company, be the same twenty-five miles, more, or less: And provided further, That in the location of the depot facilities to be provided by said Southern Pacific Railroad Company for the city of Los Angeles said company shall establish a depot for freight for said city at some point south and west of the Los Angeles river, and which shall not exceed one-half mile in distance northerly from the present depot of the Los Angeles and San Pedro Railroad Company, nor one mile southerly from said depot, and shall deliver by its cars all freight so directed to said point and depot so fixed, and
119 receive and transport the freight from such depot; and should the final location of the main line of said Southern Pacific fix the passenger depot for the city of Los Angeles on the north and east side of the Los Angeles river such location of such depot shall not exceed one-quarter of a mile from the north and east bluff bank of said river, and not further north than the extension of Eternity street across said river, nor further south than the extension of Aliso street across said river; and should the final location of the line fix the passenger depot on the south and west side of the Los Angeles river such location shall be made at a point not exceeding one and one-half miles southerly from the present depot of the Los Angeles and San Pedro railroad.

SEC. 4. It is hereby further stipulated with the Southern Pacific Railroad Company, its successors or assigns, and said company stipulates and agrees with the county of Angeles, that as a further consideration for the county bonds and railroad stock, which as herein provided will have been issued and delivered to the said company upon the completion of the fifty miles of main trunk road, and the said company will within three months after the completion of the fifty miles of said main trunk line upon which said stock and bonds shall have been issued and delivered commence the
120 construction of a branch from some suitable point to be selected by the engineers of the company on the road owned, controlled, or operated in the interest of said Southern Pacific Railroad Company, its successors or assigns, to the town of Anaheim, and that the completion of such branch shall be accomplished in not exceeding two years from the time of commencement herein provided.

SEC. 5. Whenever the clerk of the county of Los Angeles shall receive an affidavit, as hereinbefore provided for, of the engineer in

charge of the construction of the road the chairman of the board of supervisors and the treasurer of the county will draw and issue bonds forthwith in denominations of one thousand dollars, and in such total amount as hereinbefore prescribed, for each five miles so completed. Said bonds shall draw interest at the rate of seven per cent. per annum from the date of issue, payable upon the first day of January and the first day of July of each year at the office of the treasurer of the county of Los Angeles. The principal of said bonds shall be made payable in twenty years from the date of issue at the office of the treasurer of the county of Los Angeles. Said bonds shall be signed by the chairman of the board of supervisors and the treasurer of the county as such officers, and when signed shall
121 be countersigned by the clerk of the county as such clerk, and, upon the countersigning of said bonds, the seal of the county shall be affixed to each bond by the county clerk, and the county clerk shall then immediately deliver said bonds thus signed, countersigned, and sealed to the authorized agent of the said railroad company, its successors or assigns. Said county clerk so delivering said bonds shall take from such agent a receipt therefor, setting forth in said receipt the number, dates, and amounts of said bonds so issued and delivered at the same place, day, and hour that the last or tenth installment of county bonds, as hereinbefore provided, shall be delivered to the Southern Pacific Railroad Company or its authorized agent. The board of supervisors of the county of Los Angeles, under the authority conferred by an act entitled "An act to authorize the board of supervisors of the county of Los Angeles to take and subscribe the sum of one hundred and fifty thousand dollars to the capital stock of the Los Angeles and San Pedro Railroad Company in the county of Los Angeles, and to provide for the payment of the same, and other matters relating thereto," approved Feb. 1st, 1868, sections 16 and 17, shall cause the stock held by the county in the Los Angeles and San Pedro Railroad Company
122 to be also delivered, as hereinbefore provided, to the said Southern Pacific Railroad Company, its successors or assigns.

SEC. 6. Forty coupons for the interest shall be attached to each bond, so that the coupons can be removed without mutilation to the bond. Said coupons shall be signed by the treasurer of the county. Whenever any interest shall be paid upon a bond issued by the county of Los Angeles under this order the county treasurer paying the same shall receive for said interest due and paid the coupon calling for such interest, and shall cancel the same and then transmit it to the clerk of the county, taking his receipt therefor.

SEC. 7. The board of supervisors of the county of Los Angeles, previous to making out the duplicate of the general assessment roll in the year in which the hereinbefore-provided-for bonds of the county shall be be issued, and in each subsequent year until the bonds shall have been paid, will levy a tax sufficient to raise the full amount of interest required to be paid each year upon the amount of the bonds of the county issued and outstanding under this order. On or before a period of five years prior to the time of the maturity of the bonds to be issued under this order the board of super-

visors of the county of Los Angeles will take such steps
123 as shall provide by taxation or otherwise for the final redemption of the principal of the bonds to be thus issued. The taxes thus levied for the interest shall be collected in the same manner and at the same time as the general taxes for county purposes, and when collected shall be paid to the county treasurer, to be applied to the payment of the interest falling due upon the said bonds issued, and the fund to be provided for the final redemption of the hereinbefore-mentioned bonds at their maturity shall be paid to the said county treasurer, and applied by him to the redemption of said bonds as they are matured and presented for redemption.

SEC. 8. Thirty days prior to the date upon which the semi-annual interest upon the bonds thus and hereinbefore authorized to be issued shall fall due the county treasurer shall make an examination of the interest fund in his hands, and in the event of the interest fund on hand being insufficient for the payment of the interest due he shall then draw upon the general fund of the county for such money as shall make up the deficit; and in the event of the general fund being insufficient for such deficit he shall so notify the board of supervisors, who will at once provide by loan or otherwise for
124 the payment to the county treasurer of an amount sufficient to meet the interest due and preserve the faith of the county of Los Angeles.

SEC. 9. From and after the maturity of any bonds issued under this order the interest thereupon shall cease. The Southern Pacific Railroad Company hereby accepts the terms and stipulations contained in the above order, and covenants and agrees with the county of Los Angeles, through the board of supervisors thereof, that in the event of a favorable vote upon the above proposition being given by the voters of the county of Los Angeles, thereby authorizing the donation of the three hundred and eighty-five thousand dollars in county bonds, together with the two hundred and twenty-five thousand dollars held by the city and county in the capital stock of the Los Angeles and San Pedro Railroad Company, the said Southern Pacific Railroad Company will, under the conditions and stipulations, requirements, privileges, and provisos in the above order contained, build, operate, and maintain the railroads and connections in part and in whole therein provided as the consideration for the donation of bonds and stock hereinbefore mentioned.

Dated July 11, 1872.

(Signed) THE SOUTHERN PACIFIC RAILROAD CO.,
By WM. B. HYDE,
Special Agent by Authority.

125 WEDNESDAY, *Oct. 2d*, 1872.

"And It is further ordered that the electors of the county of Los Angeles be required to vote at the general election on the proposition of the Southern Pacific Railroad Company and on the proposition of the San Diego and Los Angeles Railroad Company."

charge of the construction of the road the chairman of the board of supervisors and the treasurer of the county will draw and issue bonds forthwith in denominations of one thousand dollars, and in such total amount as hereinbefore prescribed, for each five miles so completed. Said bonds shall draw interest at the rate of seven per cent. per annum from the date of issue, payable upon the first day of January and the first day of July of each year at the office of the treasurer of the county of Los Angeles. The principal of said bonds shall be made payable in twenty years from the date of issue at the office of the treasurer of the county of Los Angeles. Said bonds shall be signed by the chairman of the board of supervisors and the treasurer of the county as such officers, and when signed shall
121 be countersigned by the clerk of the county as such clerk, and, upon the countersigning of said bonds, the seal of the county shall be affixed to each bond by the county clerk, and the county clerk shall then immediately deliver said bonds thus signed, countersigned, and sealed to the authorized agent of the said railroad company, its successors or assigns. Said county clerk so delivering said bonds shall take from such agent a receipt therefor, setting forth in said receipt the number, dates, and amounts of said bonds so issued and delivered at the same place, day, and hour that the last or tenth installment of county bonds, as hereinbefore provided, shall be delivered to the Southern Pacific Railroad Company or its authorized agent. The board of supervisors of the county of Los Angeles, under the authority conferred by an act entitled "An act to authorize the board of supervisors of the county of Los Angeles to take and subscribe the sum of one hundred and fifty thousand dollars to the capital stock of the Los Angeles and San Pedro Railroad Company in the county of Los Angeles, and to provide for the payment of the same, and other matters relating thereto," approved Feb. 1st, 1868, sections 16 and 17, shall cause the stock held by the county in the Los Angeles and San Pedro Railroad Company
122 to be also delivered, as hereinbefore provided, to the said Southern Pacific Railroad Company, its successors or assigns.

SEC. 6. Forty coupons for the interest shall be attached to each bond, so that the coupons can be removed without mutilation to the bond. Said coupons shall be signed by the treasurer of the county. Whenever any interest shall be paid upon a bond issued by the county of Los Angeles under this order the county treasurer paying the same shall receive for said interest due and paid the coupon calling for such interest, and shall cancel the same and then transmit it to the clerk of the county, taking his receipt therefor.

SEC. 7. The board of supervisors of the county of Los Angeles, previous to making out the duplicate of the general assessment roll in the year in which the hereinbefore-provided-for bonds of the county shall be be issued, and in each subsequent year until the bonds shall have been paid, will levy a tax sufficient to raise the full amount of interest required to be paid each year upon the amount of the bonds of the county issued and outstanding under this order. On or before a period of five years prior to the time of the maturity of the bonds to be issued under this order the board of super-

visors of the county of Los Angeles will take such steps
123 as shall provide by taxation or otherwise for the final redemption of the principal of the bonds to be thus issued. The taxes thus levied for the interest shall be collected in the same manner and at the same time as the general taxes for county purposes, and when collected shall be paid to the county treasurer, to be applied to the payment of the interest falling due upon the said bonds issued, and the fund to be provided for the final redemption of the hereinbefore-mentioned bonds at their maturity shall be paid to the said county treasurer, and applied by him to the redemption of said bonds as they are matured and presented for redemption.

SEC. 8. Thirty days prior to the date upon which the semi-annual interest upon the bonds thus and hereinbefore authorized to be issued shall fall due the county treasurer shall make an examination of the interest fund in his hands, and in the event of the interest fund on hand being insufficient for the payment of the interest due he shall then draw upon the general fund of the county for such money as shall make up the deficit; and in the event of the general fund being insufficient for such deficit he shall so notify the board of supervisors, who will at once provide by loan or otherwise for
124 the payment to the county treasurer of an amount sufficient to meet the interest due and preserve the faith of the county of Los Angeles.

SEC. 9. From and after the maturity of any bonds issued under this order the interest thereupon shall cease. The Southern Pacific Railroad Company hereby accepts the terms and stipulations contained in the above order, and covenants and agrees with the county of Los Angeles, through the board of supervisors thereof, that in the event of a favorable vote upon the above proposition being given by the voters of the county of Los Angeles, thereby authorizing the donation of the three hundred and eighty-five thousand dollars in county bonds, together with the two hundred and twenty-five thousand dollars held by the city and county in the capital stock of the Los Angeles and San Pedro Railroad Company, the said Southern Pacific Railroad Company will, under the conditions and stipulations, requirements, privileges, and provisos in the above order contained, build, operate, and maintain the railroads and connections in part and in whole therein provided as the consideration for the donation of bonds and stock hereinbefore mentioned.

Dated July 11, 1872.

(Signed) THE SOUTHERN PACIFIC RAILROAD CO.,
By WM. B. HYDE,
Special Agent by Authority.

125 WEDNESDAY, *Oct. 2d*, 1872.

"And it is further ordered that the electors of the county of Los Angeles be required to vote at the general election on the proposition of the Southern Pacific Railroad Company and on the proposition of the San Diego and Los Angeles Railroad Company."

MONDAY, *November 11th*, 1872.

"And it is further ordered that a canvass of the voters upon the railroad proposition before the county, it being found that the proposition of the Southern Pacific Railroad Company having received eighteen hundred and ninety-six (1,896) votes for, and seven hundred and twenty-four (724) votes against, and the proposition of the San Diego and Los Angeles Railroad Company having received ninety-nine (99) votes for, and twenty-nine votes against, it is ordered that the said proposition of the Southern Pacific Railroad Company having in its favor a majority of the votes cast on said proposition to the extent of eleven hundred and seventy-two (1,172) votes, and also having in its favor a majority of ten hundred and eighteen (1,018) votes over all other railroad questions voted upon at such general election, be, and the same is hereby, declared as having carried before the people of the county, and that such South-
126 ern Pacific Railroad Company is fully and legally entitled to the bonds and stock, subject to all the conditions and restrictions provided for in the ordinance and proclamation adopted by the board of August 6th, 1872, and afterwards properly submitted to the people of the county, and that the clerk spread the above order and declaration on the minutes of this board and a certified copy of the same be transmitted at once to the Southern Pacific Railroad Company."

The defendant also read in evidence the following ordinances of the city of Los Angeles, which it was admitted were duly enacted, approved and published:

First. The ordinance of October 24th, 1872, set out in the defendants' answer and in the findings. It was admitted by the plaintiff's attorneys that the proposition referred to in this ordinance was at the election therein provided for accepted by a large majority of votes, and that after a canvass of the votes by the commom council the result was so declared and duly entered in the records of the said council.

Second. An ordinance, passed July 24th, 1873, and approved July 26th, 1873, which was in the words and figures following:

127 "An ordinance providing a free right of way for the Southern Pacific railroad through the city of Los Angeles.

"Whereas by a certain ordinance passed October 24th, 1872, the mayor and common council of the city of Los Angeles obligated said city to give to the Southern Pacific Railroad Company a free right of way for its road through said city, and such obligation having received the endorsement of the majority of the qualified voters of said city under the provisions of said above-mentioned ordinance; and

"Whereas the proper agents of said railroad company have selected as the lines for entering and leaving said city, and the necessary connections therewith, the grounds occupied by and embraced in the recently-opened streets, named, respectively, San Fernando

and Mission streets and a portion of Alameda street, as recently enlarged:

"Now, therefore, the mayor and common council of the city of Los Angeles do ordain as follows:

"SECTION 1. That all of San Fernando and Mission streets, from their initial to their terminal points, together with that portion of Alameda street between the present depot of the Los Angeles and San Pedro Railroad Company, subject to the provisos, resolu-
128 tions, and conditions hereinafter contained, be, and the same is hereby, set apart from the public highways of the city of Los Angeles to the unreserved and and unrestricted use of the Southern Pacific Railroad Company, and the right of way over and along the same, subject as aforesaid, is hereby granted to said company for the building, maintaining, and operating of its railroad thereupon by and through the track or tracks which said company shall deem it necessary to build along and over the same, and with the privilege to said company of making such embankments and excavations upon said streets as shall be found necessary by the company's engineers to the proper construction of said railroad and its connections within said city."

The balance of said ordinance consists of certain provisos which have no bearing upon the case.

"SEC. 3. An ordinance passed December 21st, 1872, approved December 26th, 1872, which was in the words and figures follo wing:

"An ordinance to repeal an ordinance entitled An ordinance fixing the location of the depot grounds of the Southern Pacific railroad in the city of Los Angeles, approved the 29th day of November, 1872, and to provide for the relocation of said depot grounds.

129 "Whereas, by an ordinance of the mayor and common council of the city of Los Angeles entitled An ordinance to submit to the voters of the city of Los Angeles the question of the sale and assignment of the stock held by the said city in the Los Angeles and San Pedro Railroad Company, approved October 24th, 1872, it was, among other things, provided that in consideration of the benefits and advantages conferred upon and derived by said city of Los Angeles by the location of the passenger and freight depots of the main trunk line within said city, and at some point on what is known as Alameda street, which point was to be selected by the mayor and common council of said city, and which should not be further north than what is known as the slaughter-house, nor further south than what would be the intersection of the extension of Third street with said Alameda street; and

"Whereas the said mayor and common council of the city of Los Angeles did, by an ordinance approved the 29th day of November, A. D. 1872, fix the location of said depot grounds upon certain lands therein described subject to the concurrence of said Southern Pacific Railroad Company; and

"Whereas the said Southern Pacific Railroad Company
130 did, on the 12th day of December, A. D. 1872, reject and refuse to approve the location made as aforesaid:

"Now, therefore, the mayor and common council of the city of Los Angeles do ordain as follows:

"SECTION 1. That the said ordinance entitled An ordinance fixing the location of the depot grounds of the Southern Pacific railroad in the city of Los Angeles, approved the 29th day of November, A. D. 1872, together with all other ordinances and parts of ordinances in conflict with this ordinance, be, and the same are hereby, repealed.

"SEC. 2. That the following-described tract of land be, and the same is hereby, selected by the mayor and common council of the city of Los Angeles for the depot grounds of the Southern Pacific Railroad Company within said city, for the passenger and freight depot of the Southern Pacific Railroad Company, which depot grounds are described as follows, to wit:"

(Here follows description of the depot grounds, which is the land now occupied by the defendant as a depot.)

E. E. Hewitt, sworn for the defendant, testified as follows:

I am and since July, 1876, have been assistant superintendent of the Southern Pacific Railroad Company and for three years
131 previous to that time was assistant superintendent of the Contract and Finance Company and the Western Development Company, and as such was cognizant of and participated in the negotiations between the Southern Pacific Railroad Company and the city, and also the county of Los Angeles, and was familiar with the various ordinances read in evidence as they were passed, and with the proceedings and action of the company with reference thereto. The depots of the company, and also its lines of road through the city, were located and constructed under and in pursuance of and in accordance with the said ordinances, and were accepted by the city as being in full compliance therewith.

The foregoing was all the evidence given on the trial, and the findings were filed on the 2nd day of July, 1884, and on the 12th day of July, 1884, the defendant filed and served a notice of intention to move for a new trial upon *its* following grounds, viz:

1st. Insufficiency of the evidence to justify the findings and decision of the court, and that the same are against law; and secondly, errors in law occurring at the trial, and excepted to by the defendant, and stating that the motion would be made upon a statement of the case.

132 Said notice is in due form, and due service of the same is admitted by the plaintiff's attorney by an endorsement in writing.

The time for preparing and serving the statement was duly extended by the order of the court to the 9th day of August, 1884.

Defendant's attorneys propose the above as their statement on motion for a new trial.

GLASSELL, SMITH & PATTON,
Attorneys for Defendant.

It is hereby stipulated that the foregoing statement is correct and may be settled, allowed, and approved by the court.

Dated this 18th day of August, 1884.

W. D. STEPHENSON,
Attorney for Plaintiff.
GLASSELL, SMITH & PATTON,
Attorneys for Defendant.

I hereby certify that the foregoing statement has been settled, and is allowed.

Aug. 18th, 1884.

V. E. HOWARD,
Judge of said Court.

Filed August 19th, 1884.

133 *Ruling on Motion for New Trial.*

(Title of court and cause.)

Minutes of superior court, Tuesday, August 19th, 1884.

Motion for new trial submitted and overruled.

V. E. HOWARD, *Judge.*

Notice of Appeal.

(Title of court and cause.)

You will please take notice that the defendant in the above-entitled action hereby appeals to the supreme court of the State of California from the judgment rendered therein and therein entered in the said superior court, on the second day of July, 1884, in favor of the plaintiff in said action and against said defendant, and from the whole thereof, and also from the order made and entered in the minutes of said court, to wit, on the 19th day of August, A. D. 1884, denying and overruling defendant's motion for new trial in said action, and from the whole thereof.

Dated this twenty-first day of August, 1884.

Yours, &c., GLASSELL, SMITH & PATTON,
Attorneys for Defendant.

134 To the clerk of the superior court and Walter D. Stephenson, Esq., attorney for plaintiff:

Due service and receipt of a copy hereof admitted, after filing, this 21st day of August, 1884.

W. D. STEPHENSON,
Attorney for Plaintiff.

Filed August 21st, 1884.

Stipulation.

(Title of court and cause.)

It is hereby stipulated and agreed that the foregoing transcript of the record on appeal in the case of The City of Los Angeles *vs.* The

Southern Pacific Railroad Company contains full, true, and correct copies of all the papers constituting the record on appeal in said cause, and that undertakings on appeal in due form have been properly filed in said cause within five days after the service of the notice of appeal.

Dated this 3rd day of September, 1884.

W. D. STEPHENSON,
Attorney for Plaintiff and Respondent.
GLASSEL, SMITH & PATTON,
Attorneys for Defendant and Appellant.

135 Service accepted by copy this — day of ——, 1884.

——,
Attorney for ——.

136 *Submission of Cause.*

In the Supreme Court, State of California. Department Two.

CITY OF LOS ANGELES
v.
S. P. R. R. Co. } 9717.

April 8th, 1885.—Appellant allowed 10 days to file brief, cause to be thereon submitted.

Title of court and cause.

May 13th, 1885.—Ordered that cause stand submitted.

THE COURT.

137 *Judgment.*

In the Supreme Court of the State of California. Department Two.

THE CITY OF LOS ANGELES, Respondent,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, Appellant. } No. 9717.

On appeal from the superior court in and for the county of Los Angeles.

And now at this day this cause being called, and having been heretofore submitted and taken under advisement, and all and singular the law and premises having been fully considered, the opinion of the court herein is delivered by the court.

Whereupon it is adjudged and decreed by the court that the judgment and order of the superior court in and for the county of Los Angeles in the above-entitled cause be, and the same are hereby, affirmed with costs.

138 *Opinion.* (*Filed August* 29, 1885.)

In the Supreme Court of the State of California. Department Two.

CITY OF LOS ANGELES
vs.
SOUTHERN PACIFIC R. R. Co. } No. 9717.

This action was brought to recover twelve hundred and twenty dollars alleged to be due for license tax. Plaintiff had judgment. Appellant does not here challenge the authority of plaintiff to provide by ordinance for the collection of a license tax upon business and occupations carried on within the corporate limits of the city of Los Angeles, including such license tax "for every steam railroad company having depot in said city."

The validity of the ordinance upon which this action is founded was passed upon in case of City of Los Angeles *vs.* Southern Pacific Railroad Company, 61 Cal., 59.

The points made here, and which, it is claimed, were not involved in the case quoted above, are:

1. That by virtue of an ordinance of the city of Los Angeles, approved October 24, 1872, an ordinance of the board of supervisors of Los Angeles county, and an agreement of defendant therein referred to, and certain other ordinances relating to the same subject-matter, a contract between the parties plaintiff and defendant was created, by the express terms of which it became the duty and right of defendant to establish its depot, and to maintain and operate its railroad in and through the city, and that the subsequent deed and ordinances of the city relating thereto constituted an express grant to the defendant of the right to maintain its depot and operate its road without any further license from the city.

2d. That the ordinance imposing a license upon the defendant is in contravention of the terms of this contract, and impairs its obligation, and is therefore void as against defendant.

From a review of the findings of the court below, and of the evidence upon which those findings are based, we conclude the city of Los Angeles and the county of Los Angeles were alike desirous that the defendant corporation should construct its railroad through the county and locate its depot and shops within the city limits, and that, as an inducement thereto, they and each of them were willing to make, and did make, concessions in the way of bonds and stock, and that the plaintiff granted certain lands needed by the corporation defendant, and granted to it free "any and all right of way which said Southern Pacific Railroad Company may require in entering, passing through, and leaving the said city with the main trunk line be secured to them free of any claim for damages or other compensation."

The court below finds that "the plaintiff, for a valuable consideration rendered by the defendant, granted to the defendant the right to construct its road, depots, [and] workshops in said city, and to operate the same and to carry on its business connected with said road and depots in said city; but by virtue of said ordinances and contract

the defendant has not the free nor unrestricted right to operate its said roads, depots, or workshops or carry on its said business within said city free from any tax, license, or other impositions from said city."

This further fact is found: "The court further finds that there was no consideration paid or contracted to be paid by the defendant to the county or city or either of them to the plaintiff for exemption from taxation."

If there is anything in the evidence which can be said to militate against the two findings above set out, it must be found in the ordinance which provides that in consideration of the benefits and advantages conferred upon and derived by the city by the location of the passenger and freight depots for the Los Angeles city station of the main trunk line of the Southern Pacific railroad within said city, etc. The city assigns certain stock to the defendant, and at the same time provides that the defendant shall not as a consideration for such stock be required to locate and build its depots and run the road to the same unless there shall be deeded to the company certain lands for depot purposes and certain other land for workshops and other buildings.

Or in the ordinance approved July 26, 1873, entitled:

"An ordinance providing a free right of way for the Southern Pacific railroad through the city of Los Angeles."

The ordinance, after reciting that by a certain ordinance passed October 24, 1872, the city was obligated to give to defendant a free right of way through the city for its road, and that the defendant had selected certain streets, proceeds to set apart and dedicate to the unreserved and unrestricted use of defendant such streets for a right of way, and to grant to defendant the right of way over the same for the uses and purposes of its road, etc.

We fail to find in this testimony anything in conflict with the facts as found by the court.

The city was the owner, as we suppose, of certain lands and personal property, which it was willing to convey to defendant provided it would build its road through the city and build its depot and workshops therein, and the former was also willing, as a further inducement, to grant a right of way through the city to defendants for its road, free from all expense or damage.

It does not follow that the business of the defendant, when established and prosecuted, or its property, were to be free from the burdens of taxation or exempt from such license tax as might lawfully be imposed upon other persons owning like property and using it in like manner.

There was a contract between plaintiff and defendant. It related to the manner of acquiring certain property and easements.

It did not, however, confer upon the grantee any rights, privileges, exemptions, or immunities in the ownership or use of the property to which it would not have been entitled had it purchased the same property at private sale from an ordinary citizen, or condemned and paid for it under the right of eminent domain.

The case of the City of Los Angeles *vs.* The Los Angeles Water Company (61 Cal., 65) is not in point.

There the plaintiff entered into an agreement with the predecessors in interest of the defendant, by which for an annual rent reserved and other considerations, defendant, the holder of a lease of plaintiff's water-works as assignee, had a right to sell and distribute water for domestic purposes, and to receive the rents and profits to its own use.

The right to sell water and carry on the business of selling and distributing water for profit was granted by plaintiff, and an ordinance imposing a license tax upon all persons vending water for domestic purposes was held invalid against defendant upon the ground that plaintiff under its contract had already reserved a sum to be paid by defendant for the privilege of vending water for domestic purposes, and could not, during the term of the lease, increase the amount to be paid for the privilege granted.

The present case differs from that in this—there, plaintiff had received a consideration for a privilege granted—here, no privilege had been granted to carry on a business and no compensation had been received for any such grant.

Plaintiff had granted a right of way and conveyed certain property as any private owner of such property might have done nothing more.

This did not, as we think, constitute such an express grant to defendants of the right to operate its road as to exclude it from liability to a license tax in common with others engaged in a like pursuit.

It follows that the ordinance imposing a license upon defendant, is not obnoxious to the charge of being in violation of a contract.

By this reasoning we do not mean to imply that it is in the power of a municipal corporation by a contract concerning its property to divest itself of any of its governmental functions.

We are of opinion the judgment and order appealed from should be affirmed.

SEARLS, *C.*

We concur:

FOOTE, *C.*,
BELCHER., *C C.*

By the court:

For the reasons given in the foregoing opinion the judgment and order are affirmed.

139 *Assignment of Errors.*

In the Supreme Court of the United States of America. October Term, in the year of our Lord one thousand eight hundred and eighty-six.

CITY OF LOS ANGELES, Plaintiff in Error,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, Defendant in Error.

The plaintiff in error says that in the above record and proceedings there is manifest error in this, to wit:

140 1st. Upon the facts pleaded and found the plaintiff was not entitled to judgment against the defendant, but the judgment should have been in favor of the latter, and the supreme court of the State of California erred, therefore, in affirming the judgment.

2d. The evidence was insufficient to sustain the findings of the court in the particulars specified in the specifications of the insufficiency of the evidence contained in the foregoing transcript, and therefore a new trial should have been granted, and the supreme court of the State of California erred in affirming the order denying a new trial.

3d. The said supreme court erred in holding that the city had power under its charter to establish a license tax for every steam railroad company having a depot in said city; also in holding that the fact that the business of the defendant extended beyond the city limits and beyond the State did not relieve it from the payment of a license tax for conducting its business within the city.

4th. The ordinance of the city of Los Angeles of October 24th, 1872, and the ordinance of the board of supervisors, and the agreement therein referred to, constituted a contract between the parties, by the express terms of which it became at once the duty and the right of the defendant to establish its depot and to operate its
141 road in and through the city, and the subsequent deed and ordinances of the city constituted an express grant to the defendant of the right to maintain its depot and to operate its roads without any further license from the city, and the ordinance imposing a license upon the defendant is in contravention of the terms of this contract and impairs its obligation, and is therefore in contravention of the Constitution of the United States and void, and the supreme court of the State of California erred in holding the contrary.

5th. The supreme court of the State of California erred in holding that the license imposed upon the defendant was valid.

Wherefore the said plaintiff in error prays that the judgment of the supreme court aforesaid affirming the judgment and order denying a new trial of the superior court aforesaid, and the said judgment and order of the superior court aforesaid, may be reversed.

GEORGE H. SMITH,
Attorney for Plaintiff in Error.

142 *Bond.*

Know all men by these presents that we, the Southern Pacific Railroad Company, a corporation duly organized and existing in the State of California, as principal, and Stephen T. Gage and Charles F. Crocker, as sureties, are held and firmly bound unto the City of Los Angeles, a municipal corporation existing in the said State of California, in the full and just sum of twenty-five hundred (2,500.00) dollars to be paid to the said City of Los Angeles, its proper officers or assigns, to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 27th day of November, 1885.

Whereas lately at a term of the supreme court of the State of California, held, to wit, on the 15th day of October, 1885, in a suit pending in the said court between the aforesaid City of Los Angeles as plaintiff and the aforesaid Southern Pacific Railroad Company as defendant, judgment was rendered against the defendant,

143 and the said defendant, having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the said judgment in the aforesaid suit and a citation directed to the said plaintiff in said suit, citing and admonishing it, the said plaintiff, to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in October, 1886:

Now the condition of the above obligation is such that if the aforesaid defendant in said suit shall prosecute the said writ of error to effect and answer all damages and costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[SEAL.] SOUTHERN PACIFIC RAILROAD CO.,
By J. L. WILLCUTT, *Secretary.*

Signed and sealed in the presence of—
STEPHEN T. GAGE.
CHAS. F. CROCKER.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

144 Stephen T. Gage and Charles F. Crocker, the sureties in the foregoing obligation, being each sworn, each for himself says that he is a resident of the State of California, and a freeholder therein, and is worth the sum of twenty-five hundred (2,500.00) dollars over and above his just debts and liabilities, exclusive of property exempt by law from execution.

STEPHEN T. GAGE.
CHAS. F. CROCKER.

Subscribed and sworn to before me this 27th day of November, 1885.

[NOTARIAL SEAL.] NOLLAND SMITH,
Notary Public.

The foregoing bond is hereby approved this 28th day of Nov., 1885.

R. F. MORRISON,
Chief Justice of the Supreme Court of the State of California.

Endorsed: Filed November 28, '85. J. W. McCarthy, clerk, per J. S. Williams, deputy.

145 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To the City of Los Angeles, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the city of Washington, in the District of Columbia, on the second Monday of October, A. D. 1886, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of California, wherein the Southern Pacific Railroad Company is the plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered, as in the said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. F. Morrison, chief justice of the supreme court of California, this 28th day of November, A. D. 1885, and of the Independence of the United States the one hundred and ninth.

[Seal Supreme Court of California.]

R. F. MORRISON,
Chief Justice of Cal.

146 On this 7th day of December, A. D. 1885, personally appeared before me, the subscriber, Geo. S. Patton, and makes oath that he delivered a true copy of the within citation to E. F. Spence, mayor of the city of Los Angeles, at said city this day.

GEO. S. PATTON.

Sworn and subscribed to the 7th day of December, A. D. 1885.

WM. S. WATERS,
Notary Public, Los Angeles County, Calif.

Due service of the within citation upon the defendant in error, therein named is hereby admitted, and the receipt of a copy hereof, this 9th day of December, A. D. 1885.

CITY OF LOS ANGELES,
Defendant in Error,
By J. W. McKINLEY,
Its Attorney.

[Endorsed:] 9717. In the Supreme Court of the United States. Southern Pacific Railroad Company, plaintiff in error, *vs.* The City of Los Angeles. Citation. Filed December 15, '85. J. W. McCarthy, clerk, per J. S. Williams, deputy.

147 *Petition for Writ.*

In the Supreme Court of the State of California.

THE CITY OF LOS ANGELES, Plaintiff and Respondent,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, Defendant and Appellant.

To the Hon. R. F. Morrison, chief justice of the supreme court of the State of California:

Your petitioner respectfully represents that on the 29th day of August, A. D. 1885, a final judgment was made and entered by this court in the above-entitled case then pending on appeal therein; that the action involves the validity of an ordinance of the city of Los Angeles imposing a license tax on the defendant, which ordinance purported to be enacted under and by virtue of authority vested in the said municipal corporation by the statute of the State of California incorporating the same; and there was and is
148 drawn in question in the said action the validity of the said ordinance and tax and of the authority of the said municipal corporation to enact the said ordnance and to impose said tax, and also the validity of said statute in so far as it confers any such authority upon the said corporation on the ground of their being repugnant to the Constitution of the United States, and the said decision was in favor of said ordinance, tax, authority, and statute.

Your petitioner further represents that the said judgment was erroneous in thus deciding, and that the case comes within the appellate jurisdiction of the Supreme Court of the United States; all of which will more fully appear by reference to the record of said case and the copy thereof herewith presented.

Wherefore your petitioner prays for the allowance of a writ of error from the said Supreme Court of the United States to this court, and for such other process as will enable your petitioner to
149 obtain a review of the case and a correction of the errors alleged by the said Supreme Court of the United States.

And your petitioner will ever pray, etc.

THE SOUTHERN PACIFIC RAILROAD COMPANY, *Plaintiff in Error,*
By GEORGE H. SMITH, *Its Attorney.*

Endorsed: Filed November 28th, 1885. J. W. McCarthy, clerk, per J. S. Williams, deputy.

150 *Allowance of Writ.*

In the Supreme Court of the State of California.

THE CITY OF LOS ANGELES, Plaintiff and Respondent,
v.
THE SOUTHERN PACIFIC RAILROAD COMPANY, Defendant and Appellant.

Upon reading the petition of the said Southern Pacific Railroad Company praying for the allowance of a writ of error from the Supreme Court of the United States to this court to review the judgment of this court heretofore rendered, to wit, the 29th day of August, 1885, and it appearing from the said petition and the record of the case that a proper case for the allowance of said writ is presented—

It is ordered that the same be allowed.

R. F. MORRISON,
Chief Justice of California..

Endorsed: Filed November 28th, 1885. J. W. McCarthy, clerk pr. J. S. Williams, deputy.

151 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of California, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court of the State of California before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The City of Los Angeles, plaintiff, and The Southern Pacific Railroad Company, defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or

152 commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Southern Pacific Railroad Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, to-

gether with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1886, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 27th day of November, in the year of our Lord one thousand eight hundred and eighty-five.

[The Seal of the Circuit Court, District of Cal'a.]

L. S. B. SAWYER,
Clerk of the Circuit Court of the United States for the District of California.

Allowed by—
R. F. MORRISON,
Chief Justice of California.

153 [Endorsed:] 9717. Supreme Court of the United States. Southern Pacific Railroad Company, plaintiff in error, *vs.* The City of Los Angeles. Writ of error. Filed November 28, '85. J. W. McCarthy, clerk, per J. S. Williams, deputy.

154 *Clerk's Certificate.*

In the Supreme Court of the State of California.

CITY OF LOS ANGELES, Defendant in Error,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error.

I, J. W. McCarthy, clerk of the supreme court of the State of California, do hereby certify the foregoing one hundred and forty-seven pages, numbered from two to one hundred and forty-eight, both numbers inclusive, contain a full, true, and correct transcript of the proceedings in the cause above entitled, and that the same together constitute the return to the annexed writ of error.

Witness my hand and the seal of the said supreme court this 15th day of December, A. D. 1885.

[Seal Supreme Court of California.]

J. W. McCARTHY, *Clerk*,
Per J. S. WILLIAMS, *Deputy*.

155 *Clerk's Certificate.*

In the Supreme Court of the State of California.

CITY OF LOS ANGELES, Defendant in Error,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error.

I, J. W. McCarthy, clerk of the supreme court of the State of California, do hereby certify the foregoing 147 pages, numbered from 2 to 148, both inclusive, contain a correct transcript and true copy

of the record of the above-entitled case in the supreme court of the State of California, and of the opinion, and of all the proceedings of said court therein, and also the petition for the writ of error, and the order of the chief justice of this court allowing the same, and of the bond given by the plaintiff in error, with the approval thereof, together with the original citation and the assignment of errors, and that the same constitute the return to the annexed writ of error.

156 Witness my hand and the seal of the said supreme court this 23rd day of December, A. D. 1885.

(Pp. 138 A to 138 C, inserted before signature.)

[Seal Supreme Court of California.]

JOHN W. McCARTHY, *Clerk*,
By JOHN T. GOFFEY, *Deputy*.

Endorsed on cover: California supreme court. No. 818. The Southern Pacific Railroad Company, plaintiff in error, *vs.* The City of Los Angeles. Filed January 2, 1886.

not before court
127-791

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 142.

JOSEPH C. SPENCER AND RALPH C. WEBSTER,
APPELLANTS,

vs.

SAMUEL McMASTER.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF WYOMING.

FILED OCTOBER 21, 1884.